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DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

7 CFR Part 652

Technical Service Provider Assistance: Correction

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Interim final rule; correction.

SUMMARY: The Natural Resources Conservation Service published in the **Federal Register** of March 24, 2003, a document concerning payment rates for technical service providers, and clarification of the Department's use of technical service providers. The dates paragraph was incorrect. This document corrects that paragraph.

DATES: This correction is effective on March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Melissa Hammond, Technical Service Provider Coordinator, Strategic Natural Resource Issues Staff, NRCS, P.O. Box 2890, Washington, DC 20013–2890; telephone (202) 720–6731; fax: (202) 720–3052; submit e-mail to: *gary.gross@usda.gov,* Attention: Technical Service Provider Assistance.

SUPPLEMENTARY INFORMATION: The Natural Resources Conservation Service published a document in the **Federal Register** of March 24, 2003, (68 FR 14131) amending an interim rule published on November 21, 2002 (67 FR 70119). We intended to reopen the comment period on the November interim rule, but inadvertently omitted that reopening information. This corrects the error. On page 14131, in the second column, the dates paragraph is corrected to read as follows:

DATES: Effective date: March 31, 2003. Comments on this amendment must be received by June 30, 2003. In addition, the comment period for the Technical Service Provider Assistance Interim Final Rule published on November 21, 2002 (67 FR 70119) is hereby reopened. Comments must be received by April 30, 2003.

Dated: March 26, 2003.

Helen V. Huntington,

NRCS Federal Register Liaison.

[FR Doc. 03–7694 Filed 3–26–03; 3:46 pm]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Docket No. FV03–959–1 FR]

Onions Grown in South Texas; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the South Texas Onion Committee (Committee) for the 2002–03 and subsequent fiscal periods from $0.05 to $0.085 per 50-pound equivalent of onions handled. The Committee locally administers the marketing order which regulates the handling of onions grown in South Texas. Authorization to assess onion handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: April 1, 2003.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, Regional Manager, McAllen Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1313 E. Hackberry, McAllen, Texas 78501; telephone: (956) 682–2833, Fax: (956) 682–5942; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 143 and Order No. 959, both as amended (7 CFR part 959), regulating the handling of onions grown in South Texas, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, South Texas onion handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable onions beginning on August 1, 2002, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 2002–03 and subsequent fiscal

periods from $0.05 to $0.085 per 50-pound equivalent of onions.

The South Texas onion marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of South Texas onions. They are familiar with the Committee's needs and with the costs for goods and services in their local area, and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting, where all persons directly affected have an opportunity to participate and provide input.

For the 2001–02 and subsequent fiscal periods, the Committee recommended and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on July 11, 2002, and unanimously recommended 2002–03 expenses of $127,002 for personnel, office, compliance, and partial promotion expenses. The assessment rate and specific funding for research and promotion projects were to be recommended at a later Committee meeting.

The Committee subsequently met on October 8, 2002, and recommended 2002–03 expenditures of $463,297 and an assessment rate of $0.085 per 50-pound equivalent of onions. Ten of the 13 Committee members present voted in support of the $0.035 per 50-pound equivalent increase and three voted against it. The three Committee members voting against the recommendation were producer handlers who basically did not approve of the research and promotion budgets. In comparison, last year's budgeted expenditures were $449,190. The Committee recommended the increased rate to fund a major market development program to promote the consumption of South Texas onions. Without the increase, the Committee's reserve fund would drop to $16,053. The Committee believes a reserve that low would not be adequate for its operations.

The major expenditures recommended by the Committee for the 2002–03 fiscal period included $72,002 for administrative expenses, $35,000 for compliance, $260,500 for promotion, and $95,795 for research projects. Budgeted expenses for these items in 2001–02 were $75,190, $30,000, $254,000, and $90,000, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of South Texas onions. At the October 2002 meeting, onion shipments for the fiscal period were estimated at 5.5 million 50-pound equivalents, which would have provided $467,500 in assessment income.

Since then, however, the Committee has become aware that the South Texas onion acreage is approximately 26 percent less than last season's 16,148-planted acres. The Committee met January 6, 2003, to discuss reports of the reduced acreage. Based on the estimated 26 percent reduced production, shipments are estimated to be 4,070,000 fifty-pound equivalents. The Committee recommended a 40 percent reduction to a market development program previously funded at $225,000 and a 50 percent cut to three onion research projects. The revised $325,400 budget for 2002–03 includes reductions of $90,000 and $47,898 in promotion and research, respectively. The Committee did not recommend a change in the proposed assessment rate.

With shipments of 4,070,000 fifty-pound equivalents, assessment income in 2002–03 should total $345,950. Income derived from handler assessments should be adequate to cover budgeted expenses. Funds in the reserve (currently $204,350) would be kept within the maximum permitted by the order (approximately two fiscal periods' expenses, § 959.43).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2002–03 budget has been reviewed and approved by USDA. Those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 90 producers of onions in the production area and approximately 35 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Most of the handlers are vertically integrated corporations involved in producing, shipping, and marketing onions. For the 2001–02 fiscal period, the industry's 35 handlers shipped onions produced on 16,148 acres with the average and median volume handled being 152,446 and 136,810 fifty-pound bag equivalents, respectively. In terms of production value, total revenues for the 35 handlers were estimated to be $39.9 million, with average and median revenues being $1.1 million and $1.0 million, respectively.

The South Texas onion industry is characterized by producers and handlers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of onions. Alternative crops provide an opportunity to utilize many of the same facilities and equipment not in use when the onion production season is complete. For this reason, typical onion producers and handlers either produce multiple crops or alternate crops within a single year.

Based on the SBA's definition of small entities, the Committee estimates that all of the 35 handlers regulated by the order would be considered small entities if only their spring onion revenues are considered. However,

revenues from other productive enterprises would likely push a large number of these handlers above the $5,000,000 annual receipt threshold. All of the 90 producers may be classified as small entities based on the SBA definition if only their revenue from spring onions is considered. When revenues from all sources are considered, a majority of the producers would not be considered small entities because receipts would exceed $750,000.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2002–03 and subsequent fiscal periods from $0.05 to $0.085 per 50-pound equivalent of onions. The Committee recommended 2002–03 expenditures of $463,297 and an assessment rate of $0.085 per 50-pound equivalent. The assessment rate of $0.085 is $0.035 higher than the 2001–02 rate.

In October 2002, the major expenditures recommended by the Committee for the 2002–03 fiscal period included $72,002 for administrative expenses, $35,000 for compliance, $260,500 for promotion, and $95,795 for research projects. Budgeted expenses for these items in 2001–02 were $75,190, $30,000, $254,000, and $90,000, respectively. The Committee recommended the increased rate to fund a major market development program to promote the consumption of South Texas onions without having to draw a large amount from reserves.

The Committee reviewed and recommended 2002–03 expenditures of $463,297, which included increases in research and promotion programs. Prior to arriving at this budget, the Committee considered information from various sources, including the Executive Committee and the Research and Market Development Subcommittees. Numerous alternative expenditure levels were discussed by these groups based upon the relative value of various research and promotion projects to the onion industry. The assessment rate of $0.085 per 50-pound equivalent of assessable onions was then determined by dividing the total recommended budget by the quantity of assessable onions, estimated at 5.5 million 50-pound equivalents for the 2002–03 fiscal period.

The quantity of assessable onions for the 2002–03 fiscal period was initially estimated at 5.5 million 50-pound equivalents. Thus, the $0.085 rate would have provided $467,500 in assessment income, and income derived from handler assessments would have been adequate to cover the $463,297 budget. This is approximately $4,203 above the anticipated expenses, which the Committee determined to be acceptable.

As mentioned earlier, the Committee met again on January 6, 2003, to discuss reports of a 26 percent onion acreage reduction, and recommended an amended budget totaling $325,400, based on a revised production estimate of 4,070,000 fifty-pound equivalents. The revised budget includes reduced promotion and research expenditures of $170,500 and $47,898, respectively. The Committee did not recommend changes to the proposed assessment rate.

With shipments of 4,070,000 fifty-pound equivalents, assessment income in 2002–03 should total $345,950. Income derived from handler assessments should be adequate to cover budgeted expenses. Funds in the reserve (currently $204,350) would be kept within the maximum permitted by the order (approximately two fiscal periods' expenses, § 959.43).

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 2002–03 fiscal period could range between $8.60 and $9.25 per 50-pound equivalent of onions. Therefore, the estimated assessment revenue for the 2002–03 fiscal period as a percentage of total grower revenue could be about 1 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meetings were widely publicized throughout the South Texas onion industry and all interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the October 8, 2002, and January 6, 2003, meetings were public meetings and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large South Texas onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on December 26, 2002 (67 FR 78751). Copies of the proposal were also mailed to all onion handlers on December 26, 2002, by the Committee staff. Finally, the proposed rule was made available through the Internet by the Office of the Federal Register and USDA. A 30-day comment period ending January 27, 2003, was provided for interested persons to respond to the proposal. Eight comments were received during the comment period; six were in support of the assessment rate increase as published, and two comments opposed the proposed assessment rate increase.

One commenter in support of the increased assessment rate noted that the Committee, recognizing tight economic conditions in recent years, reduced the assessment rate two years ago and budgeted a deficit by setting an artificially low assessment rate. This commenter, as well as another commenter, believes the Committee allowed its reserves to get too low, and both fully support the assessment rate increase. The commenter also noted that the projected volume of onions would be low due to decreased plantings. Both commenters state that in spite of the Committee making further cuts in the original budget, decreased production dictates that the assessment rate be increased.

Another comment in support of the increased assessment rate noted that, without the increase the Committee would not be able to meet its research and marketing program obligations the industry has always funded. Two other favorable comments expressed the need for continuing to promote Texas onions in order to be able to compete with other onion-producing areas.

One comment, representing a grower and shipper in District 2 (Laredo-Winter Garden) of the South Texas onion order production area, stated that over half of District 2's season is not covered by the order. The commenter opposes the increased assessment rate because he believes that the Rio Grande Valley growers and shippers gain more from the Committee's research and marketing program activities. While it is true that the regulatory period, which the Committee approved, ends June 4 each year and only includes part of District 2's season, District 2 handlers do not pay assessments during the latter part of their onion season. District 2 growers and shippers continue to receive the benefit of the assessment because all Texas onions grown in the production area covered by the marketing order are promoted. Consequently, USDA

disagrees with the commenter's statement that Rio Grande Valley growers and shippers would gain more from the increased assessment than those from the Laredo-Winter Garden area.

The second commenter opposing the increase expressed concern regarding a possible conflict of interest with some producers and handlers on the Committee who also produce and handle onions not assessed under the South Texas marketing order. The commenter stated that increasing the assessment rate should be determined by those who are directly affected, not handlers that either attain most of their onion business outside the jurisdiction of the order, or pass on the assessment to growers under the jurisdiction of the order. The commenter was concerned that such Committee members could unduly shape the decision-making of the Committee, that their decisions could be biased against their South Texas competitors, and that being on the Committee could enable them to raise the production costs (*i.e.* assessments) of their South Texas competition.

The Committee, which is composed of six producer and four handler members from District 1 (Coastal Bend—Lower Valley) and four producer and three handler members from District 2, is representative of the entire production area. The Committee is established and selected in accordance with the provisions of the order. The producer and handler members and alternates on the Committee are nominated by their peers and are eligible to serve based on their qualifications. The fact that some of the Committee members also grow and handle onions outside the South Texas onion production area does not disqualify them from serving on the Committee. Further, only South Texas onions grown in the 35-county production area may be assessed for marketing order purposes.

Based on the foregoing, no changes are being made to the rule as it was proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee, the comments received, and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the 2002–03 fiscal period began August 1, 2002, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable onions handled during such fiscal period. In addition, the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. Further, handlers are aware of this action which was recommended by the Committee at a public meeting. Also, a 30-day comment period was provided for in the proposed rule and all of the comments received have been considered.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 959 is amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

■ 1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 959.237 is revised to read as follows:

§ 959.237 Assessment rate.

On and after August 1, 2002, an assessment rate of $0.085 per 50-pound equivalent is established for South Texas onions.

Dated: March 24, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–7633 Filed 3–26–03; 1:47 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

[Docket No. FV03–966–03 C]

Tomatoes Grown in Florida; Decreased Assessment Rate; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Correcting amendment.

SUMMARY: The Agricultural Marketing Service (AMS) published an interim final rule in the **Federal Register** on November 9, 2001 (66 FR 56599), which decreased the assessment rate for tomatoes grown in Florida. The interim final rule fixed the assessment rate at $0.20 per 25-pound container or equivalent of assessable tomatoes for the 2001–02 and subsequent fiscal periods. The rate should have been fixed at $0.02 per 25-pound container or equivalent. This document corrects the assessment rate.

EFFECTIVE DATE: March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Marketing Specialist, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida 33884–1671; telephone: (863) 324–3375; Fax: (863) 325–8793; E-Mail: *Doris.Jamieson@usda.gov;* or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Ave, SW., STOP 0237, Washington, DC 20250–0237, telephone: (202) 720–2491, Fax: (202) 720–8938; E-Mail: *George.Kelhart@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

AMS published an interim final rule in the **Federal Register** on November 9, 2001 (66 FR 56599), decreasing the assessment rate for tomatoes grown in Florida [7 CFR part 966]. The interim final rule was subsequently finalized without change in a document published on March 13, 2002 (67 FR 11213).

Need for Correction

As published, the assessment rate was incorrectly identified as $0.20 per 25-pound container or equivalent. This correction document replaces the incorrect assessment rate with the correct assessment rate of $0.02 per 25-pound container or equivalent for Florida tomatoes.

List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

■ Accordingly, 7 CFR part 966 is corrected by making the following amendment:

PART 966—TOMATOES GROWN IN FLORIDA

■ 1. The authority citation for 7 CFR part 966 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 966.234 [Corrected]

■ 2. In § 966.234, the figure ''$0.20'' is revised to ''$0.02''.

Dated: March 24, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–7634 Filed 3–28–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM231; Special Conditions No. 25–216–SC–A]

Special Conditions: Boeing Model 777–200 Series Airplanes; Overhead Crew Rest Compartments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Amended final special conditions.

SUMMARY: These amended special conditions are issued for Boeing Model 777–200 series airplanes. Final special conditions; request for comments, No. 25–216–SC were issued on October 3, 2002, addressing this installation. Comments were received and these amended special conditions address those comments. These airplanes, modified by Flight Structures Inc., will have a novel or unusual design feature associated with the installation of an overhead flight crew rest compartment. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These amended special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these amended special conditions is March 20, 2003.

FOR FURTHER INFORMATION CONTACT: Alan Sinclair, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2195; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Background

On September 17, 2001, Flight Structures Inc., 4407 172 Street NE, Arlington, Washington, 98223, applied for a supplemental type certificate (STC) for installation of a Door 1 overhead flightcrew rest (OFCR) compartment in Boeing Model 777–200 series airplanes. The certification of the Alitalia Model 777–200 overhead crew rest was scheduled for October 9, 2002. The Boeing Model 777–200 series airplanes are large twin engine airplanes with various passenger capacities and ranges depending upon airplane configuration.

The OFCR compartment, adjacent to Door 1, is located in the overhead above the main passenger cabin and will include a maximum of two private berths, two seats, and a lavatory. Occupancy of the OFCR compartment will be limited to a maximum of four occupants.

The OFCR will be accessed from the main deck by stairs. In addition, an emergency hatch that opens directly into the main passenger cabin area will be provided for the compartment. A smoke detection system, an oxygen system, and occupant amenities will also be provided. This compartment will only be occupied in flight; occupancy is prohibited during taxi, takeoff, or landing.

Compliance with these special conditions does not relieve the applicant from the existing airplane certification basis requirements. One particular area of concern is that the OFCR installation creates a smaller compartment volume within the overhead area of the airplane. The applicant must comply with the requirements of §§ 25.365(e), (f), and (g), for the overhead area compartment, as well as any other airplane compartments whose decompression characteristics are affected by the installation of a crew rest compartment. Compliance with § 25.831 must be demonstrated for all phases of flight where occupants will be present.

The FAA considers OFCR compartment smoke or fire detection and fire suppression systems (including airflow management features that prevent hazardous quantities of smoke or fire extinguishing agent from entering any other compartment occupied by crewmembers or passengers) complex with respect to paragraph 6d of Advisory Circular (AC) 25.1309–1A, ''System Design and Analysis.'' In addition, the FAA considers failure of the crew rest compartment fire protection system (*i.e.*, smoke or fire detection and fire suppression systems) in conjunction with a crew rest fire to be a catastrophic event. Based on the ''Depth of Analysis Flowchart'' shown in Figure 2 of AC 25.1309–1A, the depth of analysis should include both qualitative and quantitative assessments (reference paragraphs 8d, 9, and 10 of AC 25.1309–1A). In addition, it should be noted that flammable fluids, explosives, or other dangerous cargo are prohibited from being carried in the crew rest area.

The requirements to enable crewmember(s) quick entry to the crew rest compartment and to locate a fire source inherently places limits on the amount of baggage that may be carried and the size of the crew rest area. The FAA notes that the crew rest area is limited to stowage of crew personal luggage and it is not intended to be used for the stowage of cargo or passenger baggage. The design of such a system to include cargo or passenger baggage would require additional requirements to ensure safe operation.

The addition of galley equipment or a kitchenette incorporating a cook top or other heat source, or a stowage compartment greater than or equal to 25 ft^3, into the crew rest compartment may require further special conditions to be considered.

Amendment 25–38 modified the requirements of § 25.1439(a) by adding, ''In addition, protective breathing equipment must be installed in each isolated separate compartment in the airplane, including upper and lower lobe galleys, in which crewmember occupancy is permitted during flight for the maximum number of crewmembers expected to be in the area during any operation.'' The requirements of § 25.1439(a) apply to the OFCR compartment, which is an isolated separate compartment. However, the PBE requirements for isolated separate compartments of § 25.1439(a) are not appropriate because the OFCR compartment is novel and unusual in terms of the number of occupants. In 1976 when amendment 25–38 was adopted, small galleys were the only isolated compartments that had been certificated. A maximum of two crewmembers were expected to occupy those galleys. Special Condition No. 9 addresses crew rest compartments that can accommodate up to four crewmembers. This large number of occupants in an isolated compartment was not envisioned at the time amendment 25–38 was adopted. It is not appropriate for all occupants to don PBE in the event of a fire because the first action should be to leave the confined space unless the occupant is fighting the fire. Taking the time to don the PBE would prolong the time for the emergency evacuation of the occupants and possibly interfere with efforts to extinguish the fire.

Operational Evaluations and Approval

These special conditions outline requirements for OFCR compartment design approvals (*i.e.* type design changes and supplemental type certificates) administered by the FAA's Aircraft Certification Service. Prior to operational use of an OFCR compartment, the FAA's Flight Standards Service must evaluate and approve the ''basic suitability'' of the OFCR compartment for crew occupation. Additionally, if an operator wishes to utilize a flightcrew rest area as ''sleeping quarters,'' the crew rest area must undergo an additional evaluation and approval (Reference §§ 121.485(a), 121.523(b) and 135.269(b)(5)). Compliance with these special conditions does not ensure that the requirements of part 121 or part 135 have been demonstrated.

In order to obtain an operational evaluation, the type design holder must contact the Aircraft Evaluation Group (AEG) in the Flight Standards Service and request a ''basic suitability'' evaluation or a ''sleeping quarters'' evaluation of their crew rest. The results of these evaluations must be documented in a 777 Flight Standardization Board (FSB) Report Appendix. Individual operators may then reference these standardized evaluations in discussions with their FAA Principal Operating Inspector (POI) as the basis for an operational approval, in lieu of an on-site operational evaluation.

Any changes to the approved OFCR compartment configuration that effect crewmember emergency egress or any other procedures affecting the safety of the occupying crewmembers and/or related training shall require a re-evaluation and approval. The applicant for a crew rest design change that affects egress, safety procedures, or training is responsible for notifying the FAA's AEG that a new crew rest evaluation is required.

Procedures must be developed to assure that a crewmember entering the OFCR through the vestibule to fight a fire will examine the vestibule and the lavatory areas for the source of the fire prior to entering the remaining areas of the crew rest compartment. These procedures are intended to assure that the source of the fire is not between the crewmember and the primary exit.

Type Certification Basis

Under the provisions of § 21.101, Amendment 21–69, effective September 16, 1991, Flight Structures Inc., must show that the Boeing Model 777–200, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate Data Sheet No. T00001SE or the applicable regulations in effect on the date of application for the change. Subsequent changes have been made to § 21.101 as part of Amendment 21–77, but those changes do not become effective until June 10, 2003. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. T00001SE for the Boeing Model 777–200 series airplanes include 14 CFR part 25, as amended by Amendments 25–1 through 25–82. The U.S. type certification bases for the Boeing Model 777–200 series airplanes is established in accordance with 14 CFR 21.17 and 21.29 and the type certification application date. The type certification basis is listed in Type Certificate Data Sheet No. T00001SE.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for the Boeing Model 777–200 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, Boeing Model 777–200 series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101(b)(2), Amendment 21–69, effective September 16, 1991.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Novel or Unusual Design Features

While the installation of a crew rest compartment is not a new concept for large transport category airplanes, each compartment design has unique features by virtue of its design, location, and use on the airplane. Previously, crew rest compartments have been evaluated that are installed within the main passenger compartment area of the Boeing Model 777–200 and Model 777–300 series airplanes and the overhead area of the passenger compartment of the 777–200. Other crew rest compartments have been installed below the passenger cabin area, adjacent to the cargo compartment. Similar overhead crew rest compartments have also been installed on the Boeing Model 747 airplane. The interfaces of the modification are evaluated within the interior and assessed in accordance with the certification basis of the airplane. However, part 25 does not provide all the requirements for crew rest compartments within the overhead area of the passenger compartment. Further, these special conditions do not negate the need to address other applicable part 25 regulations.

Due to the novel or unusual features associated with the installation of this crew rest compartment, special conditions are considered necessary to provide a level of safety equal to that established by the airworthiness regulations incorporated by reference in the type certificate.

Prior Comment

During a previous publication of the substantially identical special conditions a comment was received after the comment period had closed. The commenter thought requiring placards prohibiting storage of ''hazardous quantities of flammable fluids'' was unnecessary and a duplication of International Air Transport Association (IATA) Dangerous Goods Regulations, specially, ''Provisions for Dangerous Goods Carried by Passengers or Crew.'' The FAA concurs with the commenter that the placard requirement is similar to the IATA requirement, therefore, the requirement for the placard has been removed.

Discussion of Comments Received on Special Conditions No. 25–216–SC

Notice of final special conditions; request for comments, No. 25–216–SC, for the Boeing Model 777–200 series airplanes was published in the **Federal Register** on October 11, 2002 (67 FR 63250). Two commenters responded to the notice.

The first commenter requests that Special Condition No. 2 be revised to include the wording ''if the open panel would impede evacuation from the main deck.'' This comment was not incorporated because the FAA finds that the current statement adequately states the objectives of the requirement.

This commenter also requests that Special Condition No. 8 be revised to

add the statement ''Consideration can be given to bunks, walls, partitions, etc. that can be utilized to brace oneself during turbulence.'' This comment was not incorporated because the suggested statement would be considered a method of compliance. The FAA finds that the current statement adequately states the objectives of the requirement.

This commenter has a third comment requesting that Special Condition No. 14(d) be revised to include the phrase, ''except for curtained bunks.'' The FAA agrees and has incorporated the phrase into Special Condition No. 14(d) as it helps clarify the intent of the requirement.

Finally, the first commenter requests the addition of a special condition dealing with the size and fire protection of stowage compartments. This project is a one-only Supplemental Type Certificate (STC) and as such has limited application and is adequately covered by the existing regulations. Also, all future STC projects will encompass this requirement in some form. Therefore this comment was not incorporated.

The second commenter requested that Special Condition No. 1 be revised as follows: 1: The occupancy of the overhead crew rest compartment is limited to the total number of installed bunks and seats in each compartment. There must be an approved seat or berth able to withstand the maximum flight loads when occupied for each occupant permitted in the overhead crew rest compartment. When being used for required flightcrew rest, the maximum occupancy of the OFCR [overhead flight crew rest] compartment is two. The maximum occupancy in the OFAR [overhead flight attendant rest] is twelve.'' This comment was not incorporated. The distinction between an OFCR and an OFAR based on the phase of flight is an operational issue and outside the scope of these special conditions. This issue should be addressed as described earlier in the preamble under the heading, ''Operational Evaluations and Approval.''

The next comment deals with occupying the crewrest during taxi, takeoff, and landing. These special conditions do not cover occupancy during taxi, takeoff, and landing, therefore, this comment was not incorporated.

The second commenter's final comment encompasses both Special Conditions No. 6 and 7. The commenter views the OFCR as being an extension of the flightdeck. Except for purely emergency notifications, all communications to the OFCR should come from the flightdeck. The FAA concurs, and this comment was incorporated into Special Condition No. 6 to include provisions to provide only the relevant information to the flight crewmembers in the overhead crew rest. Special Condition No. 7 remains unchanged.

Applicability

As discussed above, these special conditions are applicable to the Model 777–200 series airplanes. Should Flight Structures Inc., apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate Data Sheet No. T00001SE to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1) Amendment 21–69, effective September 16, 1991.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Boeing Model 777–200 series airplanes, modified by Flight Structures Inc., with an overhead flightcrew rest (OFCR) compartment.

1. Occupancy of the OFCR compartment is limited to the total number of installed bunks and seats in each compartment. There must be an approved seat or berth able to withstand the maximum flight loads when occupied for each occupant permitted in the OFCR compartment. The maximum occupancy is four in the OFCR compartment.

(a) There must be appropriate placards, inside and outside each entrance to the OFCR compartment to indicate:

(1) The maximum number of occupants allowed,

(2) That occupancy is restricted to crewmembers that are trained in the evacuation procedures for the OFCR compartment,

(3) That occupancy is prohibited during taxi, take-off and landing, and

(4) That smoking is prohibited in the OFCR compartment.

(b) There must be at least one ashtray on the inside and outside of any entrance to the OFCR compartment.

(c) There must be a means to prevent passengers from entering the OFCR compartment in the event of an emergency or when no flight attendant is present.

(d) There must be a means for any door installed between the OFCR compartment and passenger cabin to be capable of being quickly opened from inside the compartment, even when crowding occurs at each side of the door.

(e) For all doors installed, there must be a means to preclude anyone from being trapped inside the OFCR compartment. If a locking mechanism is installed, it must be capable of being unlocked from the outside without the aid of special tools. The lock must not prevent opening from the inside of the compartment at any time.

2. There must be at least two emergency evacuation routes, which could be used by each occupant of the OFCR compartment to rapidly evacuate to the main cabin and be able to be closed from the main passenger cabin after evacuation. In addition—

(a) The routes must be located with sufficient separation within the OFCR compartment, and between the evacuation routes, to minimize the possibility of an event rendering both routes inoperative.

(b) The routes must be designed to minimize the possibility of blockage, which might result from fire, mechanical or structural failure, or persons standing below or against the escape route. One of the two evacuation routes should not be located where, during times in which occupancy is allowed, normal movement by passengers occurs (*i.e.* main aisle, cross aisle or galley complex) that would impede egress of the OFCR compartment. If an evacuation route utilizes an area where normal movement of passengers occurs, it must be demonstrated that passengers would not impede egress to the main deck. If there is low headroom at or near the evacuation route, provisions must be made to prevent or to protect occupants (of the OFCR area) from head injury. The use of evacuation routes must not be dependent on any powered device. If the evacuation path is over an area where there are passenger seats, a maximum of one row of passengers may be displaced from their seats temporarily during the evacuation process of an incapacitated person(s). If the evacuation procedure involves the evacuee stepping on seats, the seats must not be damaged to the extent that they would not be acceptable for occupancy during an emergency landing.

(c) Emergency evacuation procedures and the emergency evacuation of incapacitated occupant procedures must be established and transmitted to the operator for incorporation into their training programs and appropriate operational manuals. If the evacuation path is over an area where there are passenger seats, a maximum of one row of passengers may be displaced from their seats temporarily during the evacuation process.

(d) There must be a limitation in the Airplane Flight Manual or other suitable means requiring that crewmembers be trained in the use of evacuation routes.

3. There must be a means for the evacuation of an incapacitated person (representative of a ninety-fifth percentile male) from the OFCR compartment to the passenger cabin floor.

(a) The evacuation must be demonstrated for all evacuation routes. A flight crewmember or other crewmember (a total of one assistant within the OFCR area) may provide assistance in the evacuation. Additional assistance may be provided by up to three persons in the main passenger compartment. These additional assistants must be standing on the floor while providing assistance. For evacuation routes having stairways, the additional assistants may ascend up to one half the elevation change from the main deck to the OFCR compartment, or to the first landing, whichever is lower.

(b) Procedures for the evacuation of an incapacitated person from the OFCR compartment must be established.

4. The following signs and placards must be provided in the OFCR compartment:

(a) At least one exit sign, located near each exit, meeting the requirements of § 25.812(b)(1)(i), except that a sign of reduced background area with no less than 5.3 square inches (excluding the letters) may be utilized, provided that it is installed such that the material surrounding the exit sign is light in color (*e.g.* white, cream, light beige). If the material surrounding the exit sign is not light in color, a sign with a minimum of a one-inch wide background border around the letters would also be acceptable.

(b) An appropriate placard located near each exit defining the location and the operating instructions for each evacuation route.

(c) Placards must be readable from a distance of 30 inches under emergency lighting conditions.

(d) The exit handles and evacuation path operating instruction placards must be illuminated to at least 160 microlamberts under emergency lighting conditions.

5. There must be a means in the event of failure of the aircraft's main power system, or of the normal OFCR compartment lighting system, for emergency illumination to be automatically provided for the crew rest compartment.

(a) This emergency illumination must be independent of the main lighting system.

(b) The sources of general cabin illumination may be common to both the emergency and the main lighting systems if the power supply to the emergency lighting system is independent of the power supply to the main lighting system.

(c) The illumination level must be sufficient for the occupants of the OFCR compartment to locate and transfer to the main passenger cabin floor by means of each evacuation route.

6. There must be means for two-way voice communications between crewmembers on the flightdeck and occupants of the OFCR compartment. There must also be two-way communications between the occupants of the OFCR compartment and each flight attendant station required to have a public address system microphone per § 25.1423(g) in the passenger cabin. In addition, the public address system will include provisions to provide only the relevant information to the flight crewmembers in the overhead crew rest compartment (*e.g.*, fire in flight, aircraft depressurization, preparation of the compartment occupants for landing, etc.) and the appropriate training for the flight crewmembers.

7. There must be a means for manual activation of an aural emergency alarm system, audible during normal and emergency conditions, to enable crewmembers on the flightdeck and at each pair of required floor level emergency exits to alert occupants of the OFCR compartment of an emergency situation. Use of a public address or crew interphone system would be acceptable, providing an adequate means of differentiating between normal and emergency communications is incorporated. The system must be powered in flight, after the shutdown or failure of all engines and auxiliary power units (APU), or the disconnection or failure of all power sources dependent on their continued operation (*i.e.* engine and APU), for a period of at least ten minutes.

8. There must be a means, readily detectable by seated or standing occupants of the OFCR compartment, which indicates when seat belts should be fastened. In the event there are no seats, at least one means must be provided to cover anticipated turbulence (*e.g.* sufficient handholds). Seat belt type restraints must be provided for berths and must be compatible for the sleeping attitude during cruise conditions. There must be a placard on each berth requiring that seat belts must be fastened when occupied. If compliance with any of the other requirements of these special conditions is predicated on specific head location, there must be a placard identifying the head position.

9. In lieu of the requirements specified in § 25.1439(a) that pertain to isolated compartments and to provide a level of safety equivalent to that which is provided occupants of a small isolated galley, the following equipment must be provided in the OFCR compartment:

(a) At least one approved hand-held fire extinguisher appropriate for the kinds of fires likely to occur;

(b) Two protective breathing equipment (PBE) devices, approved to Technical Standard Order (TSO)-C116 or equivalent, suitable for fire fighting or one PBE for each hand-held fire extinguisher, whichever is greater; and

(c) One flashlight.

10. A smoke or fire detection system (or systems) must be provided that monitors each area within the OFCR compartment including those areas partitioned by curtains. Flight tests must be conducted to show compliance with this requirement. Each system (or systems) must provide:

(a) A visual indication to the flightdeck within one minute after the start of a fire;

(b) An aural warning in the OFCR compartment; and

(c) A warning in the main passenger cabin. This warning must be readily detectable by a flight attendant, taking into consideration the positioning of flight attendants throughout the main passenger compartment during various phases of flight.

11. The OFCR compartment must be designed such that fires within the compartment can be controlled without a crewmember having to enter the compartment, or the design of the access provisions must allow crewmembers equipped for fire fighting to have unrestricted access to the compartment. The time for a crewmember on the main deck to react to the fire alarm, to don the fire fighting equipment, and to gain access must not exceed the time for the compartment to become smoke-filled, making it difficult to locate the fire source.

12. There must be a means provided to exclude hazardous quantities of

smoke or extinguishing agent originating in the OFCR compartment from entering any other compartment occupied by crewmembers or passengers. This means must include the time periods during the evacuation of the crew rest compartment and, if applicable, when accessing the crew rest compartment to manually fight a fire. Smoke entering any other compartment occupied by crewmembers or passengers after opening the OFCR access door must dissipate within five minutes after closing the access to the OFCR compartment. Flight tests must be conducted to show compliance with this requirement.

If a built-in fire extinguishing system is used in lieu of manual fire fighting, then the fire extinguishing system must be designed so that no hazardous quantities of extinguishing agent will enter other compartments occupied by passengers or crew; the system must have adequate capacity to suppress any fire occurring in the OFCR compartment, considering the fire threat, volume of the compartment and the ventilation rate.

13. There must be a supplemental oxygen system equivalent to that provided for main deck passengers for each seat and berth in the OFCR compartment. The system must provide an aural and visual warning to warn the occupants of the crew rest compartment to don oxygen masks in the event of decompression. The warning must activate before the cabin pressure altitude exceeds 15,000 feet. The aural warning must sound continuously until a reset push button in the OFCR compartment is depressed.

14. The following requirements apply to OFCR compartments that are divided into several sections by the installation of curtains or partitions:

(a) To compensate for sleeping occupants, there must be an aural alert that can be heard in each section of the OFCR compartment that accompanies automatic presentation of supplemental oxygen masks. A minimum of two supplemental oxygen masks are required in each section whether or not seats or berths are installed in each section. There must also be a means by which the oxygen masks can be manually deployed from the flightdeck.

(b) A placard is required adjacent to each curtain that visually divides or separates, for privacy purposes, the OFCR compartment into small sections. The placard must require that the curtain(s) remain open when the private section it creates is unoccupied. The vestibule section adjacent to the stairway is not considered a private area and, therefore, does not require a placard.

(c) For each OFCR section created by the installation of a curtain, the following requirements of these special conditions must be met with the curtain open or closed:

(1) No smoking placard (Special Condition No. 1),

(2) Emergency illumination (Special Condition No. 5),

(3) Emergency alarm system (Special Condition No. 7),

(4) Seat belt fasten signal or return to seat signal as applicable (Special Condition No. 8), and

(5) The smoke or fire detection system (Special Condition No. 10).

(d) Overhead crew rest compartments visually divided to the extent that evacuation could be affected must have exit signs that direct occupants to the primary stairway exit. The exit signs must be provided in each separate section of the OFCR compartment, except for curtained bunks, and must meet the requirements of § 25.812(b)(1)(i).

(e) Sections within an OFCR compartment that are created by the installation of a rigid partition with a door physically separating the sections, the following requirements of these special conditions must be met with the door open or closed:

(1) There must be a secondary evacuation route from each section to the main deck, or alternatively, it must be shown that any door between the sections has been designed to preclude anyone from being trapped inside the compartment. Removal of an incapacitated occupant within this area must be considered.

(2) Any door between the sections must be shown to be openable when crowded against, even when crowding occurs at each side of the door.

(3) There may be no more than one door between any seat or berth and the primary stairway exit.

(4) There must be exit signs in each section meeting the requirements of § 25.812(b)(1)(i) that direct occupants to the primary stairway exit. An exit sign with reduced background area as described in Special Condition No. 4(a) may be used to meet this requirement.

(f) For each smaller section within the main OFCR compartment created by the installation of a partition with a door, the following requirements of these special conditions must be met with the door open or closed:

(1) No smoking placards (Special Condition No. 1),

(2) Emergency illumination (Special Condition No. 5),

(3) Two-way voice communication (Special Condition No. 6),

(4) Emergency alarm system (Special Condition No. 7),

(5) Seat belt fasten signal or return to seat signal as applicable (Special Condition No. 8),

(6) Emergency fire fighting and protective equipment (Special Condition No. 9), and

(7) Smoke or fire detection system (Special Condition No. 10).

15. The requirements of two-way voice communication with the flightdeck and provisions for emergency firefighting and protective equipment are not applicable to lavatories or other small areas that are not intended to be occupied for extended periods of time.

16. Where a waste disposal receptacle is fitted, it must be equipped with an automatic fire extinguisher that meets the performance requirements of § 25.854(b).

17. Materials (including finishes or decorative surfaces applied to the materials) must comply with the flammability requirements of § 25.853(a) as amended by Amendment 25–83. Mattresses must comply with the flammability requirements of § 25.853(c), as amended by Amendment 25–83.

Issued in Renton, Washington, on March 20, 2003.

Mike Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–7667 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14195; Airspace Docket No. 03–ACE–1]

Modification of Class E Airspace; Fairmont, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by revising the Fairmont, NE Class E airspace. It increases the size of the Class E airspace area extending upward from 700 feet above the surface of the earth to accommodate new and amended Standard Instrument Approach Procedures (SIAPs) developed for Fairmont State Airfield, Fairmont, NE. This action also modifies the Fairmont, NE Class E airspace, and its legal description, by incorporating

the updated Fairmont State Airfield airport reference point.

The intended effect of this rule is to provide controlled Class E airspace for aircraft executing an SIAP and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, July 10, 2003.

Comments for inclusion in the rules Docket must be received on or before May 1, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14195/ Airspace Docket no. 03–ACE–1, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Fairmont, NE in order to provide a safer Instrument Flight Rules (IFR) environment at Fairmont State Airfield, Fairmont, NE. The FAA has developed Area navigation (RNAV) Global Positioning System (GPS) Runway (RWY) 17, ORIGINAL SIAP; RNAV (GPS RWY 35, ORIGINAL SIAP; Nondirectional Radio Beacon (NDB) RWY 17, Amendment 1 SIAP and NDB RWY 35, Amendment 2 SIAP to serve Fairmont State Airfield, Fairmont, NE. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAPs. This amendment also modifies the Fairmont, NE Class E airspace by incorporating the current Fairmont State Airfield, NE airport reference point and deleting reference to Beklof NDB, NE in the legal description. These actions bring the legal description of this airspace area into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative command and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–14195/Airspace Docket No. 03–ACE–1.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE NE E5 Fairmont, NE

Fairmont State Airfield, NE
(Lat 40°35′10″N., long. 97°34′23″W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Fairmont State Airfield, NE

* * * * *

Issued in Kansas City, MO on March 11, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–7674 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14598; Airspace Docket No. 03–ACE–21]

Modification of Class E Airspace; Independence, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies Class E airspace at Independence, IA. An examination of controlled airspace for Independence, IA revealed discrepancies in the Independence Municipal Airport, IA airport reference point used in the legal description for the Independence, IA Class E airspace area. This action corrects the discrepancies by modifying the Independence, IA Class E airspace area. It also incorporates the revised Independence Municipal Airport, IA airport reference point in the Class E airspace legal description.

DATES: This direct final rule is effective on 0901 UTC, July 10, 2003.

Comments for inclusion in the Rules Docket must be received on or before May 1, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14598/ Airspace Docket No. 03–ACE–21, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Municipal Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface of the earth at Independence, IA. An examination of controlled airspace for Independence, IA revealed discrepancies in the Independence Municipal Airport, IA airport reference point used in the legal description for this airspace area. This amendment incorporates the revised Independence Municipal Airport, IA airport reference point and brings the legal description of the Independence, IA Class E airspace area into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, and adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–14598/Airspace Docket No. 03–ACE–21.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Independence, IA

Independence Municipal Airport, IA
(Lat. 42°27′13″ N., long. 91°56′51″ W.)
Wapsie NDB
(Lat. 42°27′08″ N., long. 91°57′04″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Independence Municipal Airport and within 2.6 miles each side of the 008° bearing from the Wapsie NDB extending from the 6-mile radius to 7.9 miles north of the airport.

* * * * *

Issued in Kansas City, MO, on March 19, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–7673 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14599; Airspace Docket No. 03–ACE–22]

Modification of Class E Airspace; Keokuk, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: An examination of controlled airspace for Keokuk, IA revealed a discrepancy in the location of the Keokuk, IA nondirectional radio beacon (NDB) used in the legal description for the Keokuk, IA Class E airspace. This action corrects the discrepancy by modifying the Keokuk, IA Class E airspace and by incorporating the current location of the Keokuk NDB in the Class E airspace legal description.

DATES: This direct final rule is effective on 0901 UTC, July 10, 2003.

Comments for inclusion in the Rules Docket must be received on or before May 1, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14599/Airspace Docket No. 03–ACE–22, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Keokuk, IA. It incorporates the current location of the Keokuk NDB and brings the legal description of this airspace area into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–14599/Airspace Docket No. 03–ACE–22.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant

economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREA;—AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565. 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace area extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Keokuk, IA

Keokuk Municipal Airport, IA
Lat. 40°27′36″ N., long 91°25′43″ W.)
Keokuk NDB
Lat. 40°27′53″ N., long 91°26′01″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Keokuk Municipal Airport and within 2.6 miles each side of the 310° bearing from the Keokuk NDB extending from the 6.6-mile radius to 7 miles northwest of the airport.

* * * * *

Dated: Issued in Kansas City, MO, on March 19, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–7672 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–13818; Airspace Docket No. 02–AGL–19]

Modification of Class E Airspace; Muskegon, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Muskegon, MI. Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPS) to several runways have been developed for Muskegon County Airport. Controlled airspace extending upward from 700 feet above the surface of the earth is needed to contain aircraft executing these approaches. This action increases the area of the existing controlled airspace at Muskegon County Airport.

EFFECTIVE DATE: 0901 UTC, July 10, 2003.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, December 10, 2002, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Muskegon, MI (67 FR 75826). The proposal was to modify controlled airspace extending upward from 700 feet above the surface of the earth to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005, of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Muskegon, MI, to accommodate aircraft executing instrument flight procedures into and out of Muskegon County Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MI E5 Muskegon, MI [Revised]

Muskegon County Airport, MI
(Lat. 43°10′10″ N., long. 86°14′18″ W.)
Grand Haven Memorial Airpark, MI
(Lat. 43°02′02″ N., long. 86°11′53″ W.)
Muskegon VORTAC, MI
(Lat. 43°10′10″ N., long. 86°02′22″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of the Muskegon County Airport, and within 2.6 miles each side of the ILS localizer southeast course extending from the 6.8-mile radius to 10.8 miles southeast of the airport, and within 2.4 miles each side of the localizer northwest course extending from the 6.8-mile radius to 12.1 miles northwest of the airport, and within 2.8 miles each side of the Muskegon VORTAC 266° radial extending from the 6.8-mile radius to 12.7 miles west of the airport, and within 1.3 miles each side of the Muskegon VORTAC 271° radial extending from the VORTAC to the 6.8-mile radius of the airport and within a 6.3-mile radius of the Grand Haven Memorial Airpark.

* * * * *

Issued in Des Plaines, Illinois on March 13, 2003.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 03–7664 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14352; Airspace Docket No. 00–AGL–25]

Modification of Class E Airspace; Hazen, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Hazen, ND. An Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway 14, and an RNAV SIAP to Rwy 32 have been developed for Mercer County Regional Airport. Controlled airspace extending upward from 700 feet or more above the surface is needed to contain aircraft executing these approaches. This action increases the size of the existing Class E airspace for Hazen, ND.

EFFECTIVE DATE: 0901 UTC, May 15, 2003.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Friday, October 6, 2000, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Hazen, ND (65 FR 59763). The proposal was to modify controlled airspace extending upward from 700 feet above the surface to contain aircraft executing instrument approach procedures.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Nineteen (19) commenters responded to this proposed airspace action. All nineteen (19) were objections, and were based on concerns dealing with the need for, or objecting to, added regulations and restrictions. The following concerns were raised:

A. Added FAA rules and regulations are unnecessary and unwanted in this region.

Of the nineteen (19) commenters, ten (10) stated they wanted no more restrictions imposed on their ability to conduct VFR flight.

B. The expansion of Class E airspace would limit the ability for VFR flight.

Of the nineteen (19) commenters, seventeen (17) felt this would adversely affect aviation, quality of life, and the economy. No specifics as to the impact on the economy were documented.

C. The expansion of Class E airspace will reduce safety.

Of the nineteen (19) commenters, eight (8) stated that expanding the overall Class E airspace as proposed, would cause an increase in flights where radar coverage is limited, thus reducing safety. All of these comments were considered and evaluated. They are responded to as follows:

In reference to concern A:

The increase in the area of Class E airspace, is necessary to ensure IFR aircraft are protected from VFR aircraft, while conducting instrument approach procedures. This is accomplished by requiring higher reported visibility in order to conduct VFR flight within the Class E airspace. The transition from Class G to Class E airspace, will require. increased visibility only for VFR flight above 1200 feet AGL. VFR flight visibility requirements for flights below this altitude remain unchanged. Cloud distance requirements for VFR flights also remain unchanged. In addition, there are only three (3) relatively small areas that will transition from Class G to Class E airspace. Unless a VFR flight was conducted exclusively in these three (3) existing areas of Class G airspace, the higher visibility requirements already exist. This is because they are surrounded by existing Class E airspace. The added restrictions are minimal.

In reference to concern B:

Although in certain areas the visibility requirements for VFR flight will increase, flight under VFR conditions is not prohibited. The comments on adversely affecting quality of life, and the economy are undefined, and beyond the scope of this airspace action.

In reference to concern C:

Establishing or modifying Class E airspace does not automatically lead to increased aircraft operations. Radar coverage in this area has no bearing or impact on IFR flights conducted in this airspace because aircraft are separated and protected by ATC non-radar procedures. Separation and protection between IFR and VFR aircraft is accomplished by visibility requirements for the VFR aircraft. Safety would actually be enhanced as a result of the larger radius of protected airspace surrounding Mercer County Airport.

Class E airspace designation for areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Hazen, ND, to accommodate aircraft executing instrument flight procedures into and out of Mercer County Regional Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) Is not a ''significant regulatory action'' under Executive Order 12866, (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL ND E5 Hazen, ND [Revised]

Hazen, Mercer County Regional Airport, ND
(Lat. 47°17′24″ N, long. 101°34′51″ W)
Dickinson VORTAC
(Lat. 46°51′36″ N, long. 102°46′25″ W)
Williston VORTAC
(Lat. 48°15′12″ N, long. 103°45′02″ W)

That airspace extending upward from 700 feet above the surface within a 10.0-mile radius of the Mercer County Regional Airport, and that airspace extending upward from 1200 feet above the surface bounded on the northwest by a line beginning at V439, thence countercloskwise along the Williston VORTAC 60.0-mile radius V71, thence northwest along V71 to the Williston VORTAC 39.2-mile radius to the 48°00′00″ N. latitude, on the north by the lat. 48°00′00″ N., on the east by the long. 100°44′02″ W., on the southeast by V169, on the south by lat. 46°10′00″ N., on the southwest by a line from 46°10′00″ N., long. 102°24′00″ W., to lat. 46°20′00″ N., long. 102°44′00″ W., on the west by V491, thence east along V2 to the Dickinson VORTAC 25.2-mile radius, thence counterclockwise along the Dickinson VORTAC 25.2-mile radius to V439, thence to the point of beginning, excluding that airspace within the Minot AFB, ND, Dickinson, ND, and Bismarck, ND, Class E airspace areas, and excluding all Federal Airways.

* * * * *

Issued in Des Plaines, Illinois, on March 5, 2003.

Richard K. Peterson

Assistant Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 03–7662 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

14 CFR Part 71

[Docket No. FAA–2002–14179; Airspace Docket No. 02–AGL–08]

Modification of Class E Airspace; Circleville, OH; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects two (2) errors contained in a final rule that was published in the **Federal Register** on Friday, January 17, 2003 (68 FR 2422). The final rule modified Class E airspace at Circleville, OH.

EFFECTIVE DATE: 0901 UTC, March 20, 2003.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018, telephone: (847) 294–7477.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 03–1124 published on Friday, January 27, 2003 (68 FR 2422), modified Class E airspace at Circleville, OH. The Docket contained an incorrect lat./long., and also contained a misspelled city name, both contained in the legal description. This action corrects these errors.

Accordingly, pursuant to the authority delegated to me, the errors for the Class E airspace, Circleville, OH, as published in the **Federal Register** Friday, January 17, 2003 (68 FR 2422), (FR Doc. 03–1124), is corrected as follows:

§ 71.1 [Corrected]

■ On page 2422, Column 3, in the legal description:

■ 1. On the second (2nd) line, correct: ''Cillicothe'' to read: ''Chillicothe''.

■ 2. On the third (3rd) line, correct: ''(Lat. 39° 26′ 29″N., long. 83° 01′ 41″W.)'' to read: (Lat. 39°26′29″ N., long. 83°01′21″ W.''.

Issued in Des Plaines, Illinois, on March 5, 2003.

Richard K. Petersen,

Assistant Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 03–7661 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14597; Airspace Docket No. 03–ACE–20]

Modification of Class E Airspace; Hampton, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies Class E airspace at Hampton, IA. An examination of controlled airspace for Hampton, IA revealed a discrepancy in the location of the Hampton nondirectional radio beacon (NDB). The Hampton NDB is a navigational aid serving Hampton Municipal Airport, IA and is used in the legal description of the Hampton, IA Class E airspace area. This action corrects the discrepancy by modifying the Hampton, IA Class E airspace area and incorporating the revised location of the Hampton NDB in the Class E airspace legal description.

EFFECTIVE DATE: This direct final rule is effective on 0901 UTC, July 20, 2003.

Comments for inclusion in the Rules Docket must be received on or before May 1, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management system, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14597/ Airspace Docket No. 03–ACE–20, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (806) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface of the earth at Hampton, IA. An examination

of controlled airspace for Hampton, IA revealed a discrepancy in the location of the Hampton NDB which is used in the legal description of the Hampton, IA Class E airspace area. This amendment incorporates the revised Hampton NDB location and brings the legal description of the Hampton, IA Class E airspace area into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth published in Paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–14597/Airspace Docket No. 03–ACE–20.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration Amends 14 CFR part 71 as Follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp. p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Hampton, IA

Hampton Municipal Airport, IA
(Lat. 42°43′25″ N., long. 93°13′35″ W.)
Hampton NDB
(Lat. 42°43′32″ N., long. 93°13′30″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Hampton Municipal Airport and within 2.6 miles each side of the 343° bearing from the Hampton NDB extending from the 6.4-mile radius to 7.4 miles northwest of the airport and within 2 miles each side of the 177° bearing from the Hampton Municipal Airport extending from the 6.4-mile radius to 7.7 miles south of the airport.

* * * * *

Issued in Kansas City, MO, on March 14, 2003.

Paul J. Sheridan

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–7660 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 255

[Docket No. OST–2003–14484]

RIN 2105–AD24

Extension of Computer Reservations Systems (CRS) Regulations

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Department is amending its rules governing airline computer reservations systems (CRSs), by changing the rules' expiration date from March 31, 2003, to January 31, 2004. If the expiration date were not changed, the rules would terminate on March 31, 2003. This extension of the current rules will keep them in effect while we complete our reexamination of the need for CRS regulations. Some or all of the rules may no longer be necessary, but the Department will maintain the current rules until January because they may be beneficial. The Department may determine in its reexamination that the need for most or all of the rules has ended. The Department has previously extended the rules from their original December 31, 1997, expiration date, most recently to March 31, 2003.

DATES: This rule is effective on March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General

Counsel, 400 Seventh St. SW., Washington, DC 20590, (202) 366–4731.

SUPPLEMENTARY INFORMATION:

Electronic Access

You can view and download this document by going to the webpage of the Department's Docket Management System (*http://dms.dot.gov/*). On that page, click on ''search.'' On the next page, type in the last five digits of the docket number shown on the first page of this document, 14484. Then click on ''search.'' An electronic copy of this document also may be downloaded by using a computer, modem, and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara/index.html.*

Discussion

We adopted rules governing CRS operations, 14 CFR part 255, because almost all airlines operating in the United States relied on the CRSs in marketing their airline services and each system was then controlled by one or more airlines or airline affiliates. 57 FR 43780, September 22, 1992. We found that rules were necessary to ensure that each of the airlines and airline affiliates that controlled a system did not use the system to unfairly prejudice the competitive position of other airlines and to ensure that travel agents and their customers could obtain accurate and unbiased information from the systems. Our rules contained a sunset date to ensure that we would reexamine whether the rules remained necessary and, if so, whether they were effective.

As a result of the sunset date provision, we began a proceeding to reexamine whether the rules were necessary and effective by issuing an advance notice of proposed rulemaking, 62 FR 47606, September 10, 1997, followed later by a supplemental advance notice of proposed rulemaking that asked the parties to update their comments. 65 FR 45551, July 24, 2000.

We recently issued a notice of proposed rulemaking in which we tentatively found that elements of the rules may remain necessary, at least in the short term, and that some changes to the rules may be justified. 67 FR 69366, November 15, 2002. We also proposed to eliminate some rules, primarily the rules barring systems from charging airlines discriminatory booking fees and requiring airlines with a significant ownership in one system to participate in other systems at the same level if the terms for doing so are commercially reasonable. We invited comment on whether the public interest would be served by full and immediate sunset of the rules. Our notice includes a detailed discussion of the rulemaking issues and our tentative findings on the relevant features of the airline distribution and CRS businesses. Comments and reply comments on our tentative findings on the need for CRS regulation and our proposals are due March 16 and May 15, 2003, respectively. 67 FR 72869, December 9, 2002.

To maintain the existing rules in effect while we complete our reexamination of those rules, we proposed to extend the sunset date to January 31, 2004. 68 FR 7325, February 13, 2003. We noted that the March 31, 2003, sunset date will come only two weeks after the close of the comment period on the notice of proposed rulemaking for our overall reexamination of the rules and that the reply comment period will close seven weeks later. We clearly cannot complete our rulemaking by the March 31 sunset date. We tentatively found that allowing the rules to sunset during our reexamination of them could be contrary to the public interest. We are aware that our final decision in our overall reexamination of the rules may be that the rules do not actually serve the public interest in the short term or in the long term.

Eleven persons commented on the proposal. U.S. Airways, Sabre, Galileo International, Amadeus Global Travel Distribution, and the American Society of Travel Agents (''ASTA'') supported the proposal, Worldspan, Northwest, United, and LanChile opposed any extension, and American and Orbitz stated their willingness to accept only a shorter extension.

We have determined to change the rules' expiration date to January 31, 2004, as we proposed. This will allow the rules to remain in effect while we complete our overall reexamination of the existing CRS rules. We recognize the need to complete the major rulemaking as soon as possible so that the rules reflect current industry conditions and economic realities. We intend to make a final decision promptly in that proceeding.

Background: Rulemaking History

Our notice of proposed rulemaking set forth our tentative findings and analysis on the nature of the airline distribution and CRS businesses and on whether the CRS rules should be kept or changed. We recognized the changes occurring in the airline distribution system, especially the Internet's erosion of the airlines' dependence on the systems, and the potential that these changes may eliminate the need for many or all of our rules. 67 FR 69376, 63977. Nonetheless, we tentatively concluded that at present some rules should be maintained to protect airline competition and consumers. We have requested comment on whether the non-discriminatory booking fee and mandatory participation rules noted above could be eliminated, since airlines may have more bargaining leverage against the systems than we have found in past rulemakings. 67 FR 69368. We will also consider comments contending that additional rules are unnecessary or counterproductive. We will take these comments into account in considering whether to retain some or any of the rules, or whether full and complete sunset may be in the public interest.

We initially established a sixty-day comment period and a thirty-day reply comment period. As a result of a petition submitted by nineteen commenters, we extended the comment period by sixty days and the reply comment period by thirty days. 67 FR 72869, December 9, 2002.

While we have been conducting our reexamination of the rules, we have changed the sunset date five times to maintain the rules pending our completion of that reexamination. Our most recent extension was to March 31, 2003. 62 FR 66272, December 18, 1997; 64 FR 15127, March 30, 1999; 65 FR 16808 March 30, 2000; 66 FR 17352, March 30, 2001; and 67 FR 14846, March 28, 2002.

Our Proposed Sunset Date Extension

We again proposed to extend the expiration date for our CRS rules, to January 31, 2004, in order to maintain the rules while we complete our reexamination of the need for the rules and their effectiveness. 68 FR 7325, February 13, 2003. We explained that we could not issue final rules by the current sunset date, March 31, 2003. Changing the sunset date would enable us to preserve the status quo until we determine which rules, if any, should be retained. We tentatively determined that doing so would be in the public interest. In that regard we referenced our notice of proposed rulemaking for the overall reexamination of the rules, where we tentatively concluded that elements of the rules may be necessary, at least in the near term, to protect airline competition and consumers against potentially unreasonable and unfair CRS practices. We further cited our

obligation under 49 U.S.C. 40105(b), formerly section 1102(a) of the Federal Aviation Act, then codified as 49 U.S.C. 1502(a), to act consistently with the United States' obligations under bilateral air services agreements, and concluded that that obligation might justify a short-term continuation of the rules. 67 FR 69384. We stated our awareness of the importance of adopting final rules that reflect current conditions in the CRS and airline distribution businesses.

Comments

Three of the systems—Amadeus, Galileo, and Sabre—supported our proposal to change the sunset date to January 31, 2004, as did ASTA, the largest travel agency trade association, and U.S. Airways. American and Orbitz, the on-line travel agency owned by American, Continental, Delta, Northwest, and United, supported a shorter extension of the rules. American proposed August 31 as the new sunset date, while Orbitz proposed September 30. The other commenters—Delta, Northwest, United, and LanChile—opposed any extension of the rules. United particularly opposed any continuation of the non-discriminatory booking fee and mandatory participation rules.

Sabre filed a reply challenging several of the factual assertions made by several airline commenters concerning the systems' alleged market power and unreasonable practices.

Final Rule

We have determined to adopt our proposal to change the sunset date to January 31, 2004. We obviously cannot complete our overall reexamination of the rules by March 31, and we continue to believe that we may well need an additional ten months to complete that proceeding. The comment period for reply comments will end on May 15, and we must then analyze the comments, decide what final rules should be adopted, and draft a final rule. The final rule must be reviewed by the Office of Management and Budget (''OMB''). This entire process may require ten months for completion, especially given the complex and controversial issues presented in that rulemaking.

We will, of course, try to issue a final rule as soon as possible rather than wait until the new January 31 sunset date. Adopting a shorter extension at this time might well require us to conduct an additional rulemaking to change the date again, which would be an inefficient use of Government resources and interfere with our intent to focus on completing the overall reexamination of the rules as promptly as possible. A shorter extension might also keep us from thoroughly and carefully examining the issues before making our final decision on whether CRS rules remain necessary and, if so, how they should be changed.

We recognize that the rules may have become unnecessary. As we continue our reexamination, we will maintain the rules based on a tentative finding that some of the rules may serve the public interest. It may remain true, for example, that the systems have market power that could be used to prejudice airline competition. American thus states, ''CRS market and pricing power remain intact * * *.'' American Comments at 1. If so, ending the rules would not necessarily enable airlines to obtain better terms for participation. United, however, has pointed out that we proposed to eliminate the non-discriminatory booking fee and mandatory participation rules because we tentatively found that they may prevent airlines from obtaining lower prices. We cannot adopt United's suggestion that any extension of the sunset date exclude those two rules, since that would amount to a change in the existing rules that we do not wish to adopt until we have had the opportunity to consider the comments on the issue. Nor can we agree now, before the end of the comment period for our proposals on changing the rules, with the assertions by several other commenters that the rules preserve and enhance the systems' market power. *See, e.g.*, Orbitz Comments. We have found in past rulemakings that rules were needed to curb the systems' market power, most recently in the parity clause rulemaking completed five years ago. 62 FR 59784, November 5, 1997. We tentatively concluded in our recent notice of proposed rulemaking that we see some evidence that the systems may still have market power. At issue is whether some or all of the rules affect the exercise of such market power, to the extent it exists, and whether they do so in a manner that serves the public interest.

Effective Date

We have determined for good cause to make this amendment effective on March 31, 2003, rather than thirty days after publication as required by the Administrative Procedure Act except for good cause shown. 5 U.S.C. 553(d). To keep the current rules in force, we must make this amendment effective by March 31, 2003. Since the amendment preserves the status quo, it will not require the systems, airlines, or travel agencies to change their operating methods. Making this amendment effective on less than thirty days notice accordingly will not impose an undue burden on anyone.

Regulatory Process Matters

Regulatory Assessment

This rulemaking is a significant regulatory action under section 3(f) of Executive Order 12866 and has been reviewed by the Office of Management and Budget under that order. The proposal is also significant under the regulatory policies and procedures of the Department of Transportation, 44 FR 11034.

Our notice of proposed rulemaking in this proceeding cited the tentative findings of the preliminary regulatory assessment in our notice of proposed rulemaking for the overall reexamination of the rules that the existing rules do not appear to impose a significant burden on the systems or their users. 68 FR 7326, citing 67 FR 69418–69423. We stated our belief that that regulatory assessment should be applicable to our proposal to extend the rules' sunset date and that no new regulatory impact statement appears to be necessary. We invited interested persons to comment on those findings. No commenter specifically commented on our regulatory assessment, which we will make final.

This rule will not impose unfunded mandates or requirements that would have any impact on the quality of the human environment.

Small Business Impact

Congress enacted the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.,* to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The act requires agencies to review proposed regulations that may have a significant economic impact on a substantial number of small entities. For purposes of this rule, small entities include smaller U.S. airlines and smaller travel agencies.

This rule sets forth the reasons for our extension of the rules' expiration date and the objectives and legal basis for that rule.

Our notice of proposed rulemaking on this extension proposal cited the tentative regulatory flexibility analysis on the rules' impact that was included in our notice of proposed rulemaking for the reexamination of the rules. We stated that that analysis appeared to be valid for our proposed extension of the rules' termination date. 68 FR 7326–7327. We stated that we would consider

comments on that analysis. No one filed such comments, and we will adopt that analysis as our final regulatory flexibility statement for this proceeding.

Our rule contains no direct reporting, record-keeping, or other compliance requirements that would affect small entities. There are no other federal rules that duplicate, overlap, or conflict with our proposed rules.

I certify under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. *et seq.*) that this regulation will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no collection-of-information requirements subject to the Paperwork Reduction Act, Public Law. 96–511, 44 U.S.C. chapter 35.

Federalism Assessment

We stated that we had reviewed our proposed rule in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule will not limit the policymaking discretion of the States. Nothing in this rule will directly preempt any State law or regulation. We are adopting this amendment primarily under the authority granted us by 49 U.S.C. 41712 to prevent unfair methods of competition and unfair and deceptive practices in the sale of air transportation. Our notice of proposed rulemaking stated our belief that the policy set forth in this rule is consistent with the principles, criteria, and requirements of the Federalism Executive Order and the Department's governing statute.

We invited comments on these conclusions. 68 FR 7327. No one commented on our federalism assessment. We will therefore make it final. Because the rule will have no significant effect on State or local governments, as discussed above, no consultations with State and local governments on this rule were necessary.

List of Subjects in 14 CFR Part 255

Air carriers, Antitrust, Consumer protection, Reporting and recordkeeping requirements, Travel agents.

■ Accordingly, the Department of Transportation amends 14 CFR part 255 as follows:

PART 255—(AMENDED)

■ 1. The authority citation for part 255 continues to read as follows:

Authority: 49 U.S.C. 40101, 40102, 40105, 40113, 41712.

■ 2. Section 255.12 is revised to read as follows:

§ 255.12. Termination.

The rules in this part terminate on January 31, 2004.

Issued in Washington, DC, on March 25, 2003.

Norman Y. Mineta,

Secretary of Transportation.

[FR Doc. 03–7636 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–62–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228 and 229

[Release Nos. 33–8177A; 34–47235A; File No. S7–40–02]

RIN 3235–AI66

Disclosure Required by Sections 406 and 407 of the Sarbanes-Oxley Act of 2002; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Corrections to final regulations.

SUMMARY: We are making technical corrections to rules adopted in Release No. 33–8177 (January 23, 2003), which were published in the **Federal Register** on January 31, 2003 (68 FR 5110). The rules implement sections 406 and 407 of the Sarbanes-Oxley Act of 2002 by requiring disclosures regarding audit committee financial experts and codes of ethics. This document amends an instruction to the rule to clarify that disclosures regarding audit committee financial experts are required only in annual reports.

EFFECTIVE DATE: March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Ray Be, Special Counsel, Office of Rulemaking, Division of Corporation Finance, at (202) 942–2910, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0312.

SUPPLEMENTARY INFORMATION:

I. Background

On January 23, 2003, the Commission adopted,[1] among other things, amendments to item 401 of Regulations S–K and S–B.[2] These rules require disclosure of whether a company has an audit committee financial expert, as defined in the rule, serving on its audit committee.

Subsequent to the adoption of the amendments, questions arose regarding whether the disclosures required by the new disclosure item must be provided in registration statements under the Securities Act of 1933[3] and the Securities Exchange Act of 1934.[4] Although the discussion of these provisions in the adopting release makes clear that such disclosure is required only in a company's annual report, the new disclosure item did not clearly state that such disclosure is required only in annual reports.

Accordingly, the amendments set forth in this document clarify that the rules require disclosure of whether a company has an audit committee financial expert serving on its audit committee only in an annual report. Although this disclosure is not required in any document other than the annual report, a company may, at its discretion, include the audit committee financial expert disclosure in its proxy or information statement and incorporate that disclosure into its annual report if it complies with applicable rules for incorporation by reference. The changes are technical corrections to clarify the rules as described in the original adopting release, and do not alter the forms in which the disclosure is required as described in the original adopting release.

II. Need for Correction

As published, the final regulations contain errors which are in need of clarification.

III. Correction of Publication

Accordingly, the publication on January 31, 2003, of the final rules (Release No. 33–8177) relating to the disclosure of whether a company has an audit committee financial expert serving on its audit committee and whether a company has adopted a code of ethics for its principal executive officer, principal financial officer, principal accounting officer and controller, which were the subject of FR Doc. 03–2018, is corrected as follows:

§ 228.401 [Corrected]

On page 5126, in the first column, paragraph 1 to Instructions to Item

[1] *See* Release No. 33–8177 (Jan. 23, 2003) (68 FR 5110).

[2] 17 CFR 229.401; 17 CFR 228.401.

[3] 15 U.S.C. 77a *et seq.*

[4] 15 U.S.C. 78a *et seq.*

401(e) of § 228.401 is corrected to read as follows:

* * * * *

Instructions to Item 401(e)

1. The disclosure under Item 401(e) is required only in a small business issuer's annual report. The small business issuer need not provide the disclosure required by this Item 401(e) in a proxy or information statement unless that small business issuer is electing to incorporate this information by reference from the proxy or information statement into its annual report pursuant to general instruction E(3) to Form 10–KSB.

* * * * *

§ 229.401 [Corrected]

On page 5127, in the third column, paragraph 1 to Instructions to Item 401(h) of § 229.401 is corrected to read as follows:

* * * * *

Instructions to Item 401(h)

1. The disclosure under Item 401(h) is required only in a registrant's annual report. The registrant need not provide the disclosure required by this Item 401(h) in a proxy or information statement unless that registrant is electing to incorporate this information by reference from the proxy or information statement into its annual report pursuant to general instruction G(3) to Form 10–K.

* * * * *

Dated: March 26, 2003.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–7680 Filed 3–28–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–44992A; File No. S7–26–98]

RIN 3235–AH04

Books and Records Requirements for Brokers and Dealers Under the Securities Exchange Act of 1934

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the amendments to the books and records requirements for brokers and dealers under the Securities Exchange Act of 1934 that were published on November 2, 2001. The corrections contained herein redesignate two paragraphs that were incorrectly numbered and amend references to those two paragraphs to reflect that change.

EFFECTIVE DATE: May 2, 2003.

FOR FURTHER INFORMATION CONTACT: Bonnie L. Gauch, Attorney, at (202) 942–0765, in the Division of Market Regulation, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION:

I. Background

Rules 17a–3 and 17a–4 [1] under the Securities Exchange Act of 1934 [2] (the ''Exchange Act'') (hereinafter the ''Books and Records rules''), specify minimum requirements with respect to the records that broker-dealers must make, and how long those records and other documents relating to a broker-dealer's business must be kept. The Securities and Exchange Commission (the ''Commission'') amended the Books and Records rules on October 26, 2001.[3]

II. Need for Correction

As published, the amendments to the Books and Records rules contain a rule designation which was designated by another final rule. In the final rules regarding the applicability of CFTC and SEC customer protection, recordkeeping, reporting, and bankruptcy rules and the Securities Investor Protection Act of 1970 to Accounts Holding Security Futures Products, published on Friday, September 13, 2002, new paragraph (f) to rule 17a–3 was adopted and became effective immediately upon publication. The amendments to the Books and Records rules erroneously also designated a new paragraph (f) of rule 17a–3.[4] This correction redesignates the paragraph 17a–3(f) contained in the amendments to the Books and Records rules as paragraphs 17a–3(g) and makes other necessary changes throughout the release text and final rules to facilitate this change.

III. Correction of Publication

Accordingly, the final rule FR Doc. 01–27439 published on November 2, 2001 (66 FR 55818), is corrected as follows:

1. On page 55838, column 1, amenditory instruction 3.e., second line, revise the reference ''(f) and (g)'' to read ''(g) and (h)'';

2. On page 55838, column 2, paragraph (12)(i), fourth line, revise the reference ''paragraph (g)(4)'' to read ''paragraph (h)(4)'';

3. On page 55839, column 3, paragraphs (f) and (g) are redesignated as paragraphs (g) and (h).

4. On page 55841, column 1, paragraph (k), third line, revise the reference ''§ 240.17a–3(f)'' to read ''§ 240.17a–3(g)'';

5. On page 55841, column 1, paragraph (l)(1), second line, revise the reference ''§ 240.17a–3(g)(1)'' to read ''§ 240.17a–3(h)(1)'';

6. On page 55841, column 1, paragraph (l)(2), second line, revise the reference ''§ 240.17a–3(g)(2)'' to read ''§ 240.17a–3(h)(2)'';

7. On page 55841, column 1, paragraph (l)(3), third line, revise the reference ''§ 240.17a–3(g)(3)'' to read ''§ 240.17a–3(h)(3)''; and

8. On page 55841, column 2, paragraph (l)(4), beginning on line two, revise the reference ''§ 240–17a–3(g)(4)'' to read ''§ 240.17a–3(h)(4)''.

Dated: March 26, 2003.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–7614 Filed 3–28–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 249

[Release No. 33–8183A; 34–47265A; 35–27642A; IC–25915A; IA–2103A, FR–68, File No. S7–49–02]

RIN 3235–AI73

Strengthening the Commission's Requirements Regarding Auditor Independence

AGENCY: Securities and Exchange Commission.

ACTION: Corrections to final regulations.

SUMMARY: We are making technical corrections to rules adopted in Release No. 33–8183 (January 28, 2003), which were published in the **Federal Register** on February 5, 2003 (68 FR 6005). The rules relate to requirements regarding auditor independence and enhanced disclosure of fees paid to auditors. This document corrects the numbering scheme for items within Forms 10–K and 10–KSB.

EFFECTIVE DATE: March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Ray Be, Special Counsel, Office of Rulemaking, Division of Corporation Finance, at (202) 942–2910, U.S. Securities and Exchange Commission,

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[1] 17 CFR 240.17a–3 and 240.17a–4.

[2] 17 U.S.C. 78, *et al.*

[3] Securities Exchange Act Release No. 44992, 66 FR 55818 (Nov. 2, 2001) (the ''Adopting Release'').

[4] 67 FR 58284 (Sept. 13, 2002).

450 Fifth Street, NW, Washington, DC 20549–0312.

SUPPLEMENTARY INFORMATION:

I. Background

On January 28, 2003, the Commission adopted amendments to strengthen requirements regarding auditor independence and enhance disclosure regarding fees paid to auditors.[1] These rules were designed to implement provisions of the Sarbanes-Oxley Act of 2002.[2] The adopting release made erroneous references to items within Forms 10–K and 10–KSB. Accordingly, the amendments correct the numbering of items in these forms, but do not alter the disclosure requirements described in the original adopting release.

II. Need for Correction

As published, the final regulations contain errors which are in need of clarification.

III. Correction of Publication

In FR Doc. 03–2364 published on February 5, 2003 (68 FR 6005) make the following corrections.

1. On page 6050, in the first column, instruction 10 is corrected to read as follows:

10. Amend Form 10–K (referenced in § 249.310) by:

a. Redesignating Item 15 of Part IV as Item 16 of Part IV, and

b. Adding new Item 15 to Part III.

The addition reads as follows:

* * * * *

2. On page 6050, in the first, second and third columns, ''Item 16.'' is corrected to read ''Item 15.'' in each place it appears.

Dated: March 26, 2003.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–7681 Filed 3–28–03; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Chapter 1

Change of Address; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to reflect a change in the address for the Center for Food Safety and Applied Nutrition (CFSAN). This action is editorial in nature and is intended to improve the accuracy of the agency's regulations.

EFFECTIVE DATE: December 14, 2001.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy and Planning (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 6, 2001 (66 FR 56034), FDA amended its regulations to reflect that effective December 14, 2001, CFSAN's address was to change to 5100 Paint Branch Pkwy., College Park, MD 20740. The document amended FDA's regulations by removing ''200 C Street, SW., Washington, DC 20204'' or ''200 C St. SW., Washington, DC 20204'' wherever they appeared and added in their place CFSAN's new address. However, after publication of the November 6, 2001, document, CFSAN's outdated address inadvertently remained in certain regulations. This document amends FDA's regulations to reflect CFSAN's change of address by removing the entire outdated address and adding the new address wherever it appears in 21 CFR parts 101, 165, 172, 173, 177, 178, and 184.

Publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). Notice and public procedure are unnecessary because FDA is merely correcting nonsubstantive errors.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR chapter I is amended as follows:

■ 1. Parts 101, 165, 172, 173, 177, 178, and 184 are amended by removing ''200 C St. SW., Washington, DC'' or ''200 C St. SW., Washington, DC 20204'' or ''200 C St. SW., Washington, DC 20204–0001'' wherever they appear and by adding in their place ''5100 Paint Branch Pkwy., College Park, MD 20740.''

■ 2. Parts 710 and 720 are amended by removing ''Department of Health and Human Services, Washington, DC 20204'' wherever it appears and by adding in its place ''5100 Paint Branch Pkwy., College Park, MD 20740.''

Dated: March 25, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–7600 Filed 3–28–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 211, 226, 510, and 514

[Docket No. 88N–0038]

RIN 0910–AC42

Records and Reports Concerning Experience With Approved New Animal Drugs

AGENCY: Food and Drug Administration, HHS.

ACTION: Withdrawal of interim final rule and issuance of final rule.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing the interim final rule that it published on February 4, 2002. The interim final rule amended the regulations for records and reports concerning experiences with approved new animal drugs. FDA invited interested parties to comment on the interim final rule. As a result of those comments, this final rule more clearly defines the kinds of information to be maintained and submitted by new animal drug applicants for new animal drug applications (NADAs) or abbreviated new animal drug applications (ANADAs). In addition, the final rule revises the timing and content of certain reports to enhance their usefulness. This regulation will provide for protection of public and animal health and reduce unnecessary recordkeeping and reporting requirements.

DATES: This rule is effective June 30, 2003. The interim final rule published on February 4, 2002 (67 FR 5046), is withdrawn as of March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Glenn Peterson, Center for Veterinary Medicine (HFV–212), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0224, or gpeterso@cvm.fda.gov. Form FDA 1932 and Form FDA 2301 may be obtained by calling the Food and Drug Administration, Center for Veterinary Medicine, Division of Surveillance at 301–827–6642.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of December 17, 1991 (56 FR 65581), FDA published

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[1] *See* Release No. 33–8183 (Jan. 28, 2003) [68 FR 6006].

[2] Pub. L. 107–204, 116 Stat. 745 (2002).

a proposed rule (the proposed rule for records and reports) to revise § 510.300 (21 CFR 510.300) and to redesignate it as § 514.80 (21 CFR 514.80). This regulation implements section 512(l) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(l)) which provides that, following approval of an NADA or ANADA, applicants must establish and maintain records and make reports to the agency as prescribed by regulation or order. We (FDA) proposed the revision in order to more clearly define the kinds of information to be maintained and submitted by the applicant and to revise the timing and content of certain reports to enhance the usefulness of the information.

After considering comments submitted in response to the proposed rule for records and reports, FDA adopted the rule in modified form in an interim final rule. The scope and coverage of the interim final rule differed in some respects from the proposed rule for records and reports. The proposed rule for records and reports covered NADAs, ANADAs, and medicated feed applications (MFAs). In contrast, the interim final rule covered only NADAs and ANADAs. The Animal Drug Availability Act of 1996 (ADAA) (21 U.S.C. 360b(a) and (m)) amended the statutory provisions in the act regarding medicated feeds and eliminated MFAs. Therefore, the interim final rule did not address MFAs. However, the interim final rule retained reporting requirements for adverse drug experiences (ADEs) with feeds incorporating approved Type A medicated articles.

While the proposed rule for records and reports proposed to remove 21 CFR 510.310, which addressed records and reports for new animal drugs approved before June 20, 1963, we issued a final rule that revoked this provision in response to the Administration's ''Reinventing Government Initiative'' (61 FR 37680, July 19, 1996). The proposed rule for records and reports followed a style and format similar to the human drug records and reports regulations in part 314 (21 CFR part 314). The interim final rule maintained a similar style and format, but removed many of the proposed records and reports requirements that are not necessary to monitor animal drugs.

In response to initial concerns over duplicate reporting, FDA had removed proposed § 514.82 from the interim final rule, which concerned records and reports from manufacturers, packers, labelers, and distributors other than the applicant. However, the agency did retain certain record and report requirements for nonapplicants (defined in new § 514.3) (21 CFR 514.3)) and in § 514.80(b) of the interim final rule. Under § 514.80(b)(3), nonapplicants must submit reports of adverse events to applicants and, if they choose, also to FDA. FDA requires such reports under the authority of sections 501 and 701 of the act (21 U.S.C. 351 and 371) and section 512(l) of the act. Keeping track of such reports helps the agency assure that the new animal drug meets the requirements of the act as to safety as required by section 501. Additionally, section 512(l) requires applicants to report adverse events that the applicant has ''received or otherwise obtained.'' In this instance, FDA is requiring that the applicant ''receive'' reports from other parties that are listed on the label by requiring that the nonapplicants give the reports to the applicants. For purposes of clarity, the agency also made some changes to the text and organization of the interim final rule.

On February 4, 2002, the interim final rule on ADE records and reports was published in the **Federal Register** with an effective date of August 5, 2002 (67 FR 5046). In the **Federal Register** of July 31, 2002 (67 FR 49568), the effective date of the interim final rule published at 67 FR 5046 was delayed indefinitely. We received and reviewed 33 comments on the interim final rule from 4 commenters. In response to those comments, the agency is withdrawing the interim final rule published February 4, 2002 (67 FR 5046) and issuing this final rule.

II. Comments on the Interim Final Rule

The agency received four sets of comments on the interim final rule for records and reports, three from industry associations, and one from a pharmaceutical company. A discussion of the comments and our response follows. In the interest of clarity, the comments are addressed by relevant section of the rule, with general comments following.

A. Definition of Adverse Drug Experience (§ 514.3)

(Comment 1) One comment suggested that the definition of ''Adverse Drug Experience'' be changed from ''Failure of a new animal drug to produce its expected pharmacological or clinical effect (lack of effectiveness)'' to ''Unusual failure of a new animal drug to produce its expected pharmacological or clinical effect (lack of effectiveness).'' The comment states that it is the unusual failure to respond to therapy that is of concern. The agency stated in comment 7 of the preamble to the interim final rule that failures to respond to therapy were expected. The comment responded ''that current product labeling does not usually address efficacy failures.'' According to the comment, a failure not listed on the label would be considered unexpected and thus must be a 15-day NADA/ANADA alert report.

FDA agrees with the comment and does not intend for all effectiveness failures to be defined as ADEs. To this end, FDA will clarify the definition by changing the phrase ''expected pharmacological or clinical effect (lack of effectiveness)'' to ''expected pharmacological or clinical effect (lack of expected effectiveness).'' FDA also will continue to work with applicants and provide advice to applicants in determining reportable events. For example, consider a drug that is expected to cure 80 percent of the animals treated, but cures 90 percent. While there is still a 10 percent failure rate, the success rate is above the expected rate of 80 percent; therefore, this is not a reportable ADE. However, if a drug is expected to cure 80 percent of the animals treated, but cures only 40 percent, which is a 60 percent failure rate and below the expected rate, a reportable ADE has occurred. This would be reported as a 15-day NADA/ANADA alert report since it is an unexpected ADE.

B. Definition of Applicant (§ 514.3)

(Comment 2) One comment suggested that the definition of ''Applicant'' be changed from ''Applicant is a person who owns a new animal drug application or ANADA'' to ''Applicant is a person who holds a new animal drug application or an ANADA.'' The comment explained that the actual owner of an application may be different from the sponsor of the application. It may be a parent company with the U.S. company being the sponsor. The comment agreed with the agency's statement in the preamble to the interim final rule that the term ''applicant is limited to the holder of an approved application (NADA or ANADA) * * *.''

The agency will revise the definition of ''applicant'' in § 514.3 as follows:

''*Applicant* is a person or entity who owns or holds on behalf of the owner the approval for an NADA or an ANADA, and is responsible for compliance with applicable provisions of the act and regulations.''

C. Definition of Increased Frequency of Adverse Drug Experience and Summary Report of Increased Frequency of Adverse Drug Experience (§§ 514.3 and 514.80(b)(2)(iii))

(Comment 3) One comment requested that FDA provide additional clarification of this requirement or delete the requirement of a summary report. The comment acknowledged and appreciated FDA's willingness to make changes in response to previous comments. However, it stated that there are doubts that this requirement can be met ''even with the adjustment for drug exposure.'' The comment stated that the adjustment for drug exposure based on distribution data would be unreliable given that distribution data does not ''equate[d] with the amount actually used (exposure) in any given time period.'' Also, the comment maintained that this requirement of a summary report is ''troubling'' because it is required to be submitted within 15 working days.

In retrospect, FDA does concur with the concern about requiring summary reports within 15 working days. FDA has modified § 514.80(b)(2)(iii) to require that information be reported in the 6-month and yearly periodic drug experience reports under § 514.80(b)(4)(v). FDA also has made a conforming change to § 514.80(a)(4) to include § 514.80(b)(4)(v).

The following is the change to former § 514.80(b)(2)(iii), now under § 514.80(b)(4)(v):

(v) *Summary report of increased frequency of adverse drug experience*. The applicant must periodically review the incidence of reports of adverse drug experiences to determine if there has been an increased frequency of serious (expected and unexpected) adverse drug events. The applicant must evaluate the increased frequency of serious (expected or unexpected) adverse drug events at least as often as reporting of periodic drug experience reports. The applicant must report the increased frequency of serious (expected and unexpected) adverse drug events in the periodic drug experience report. Summaries of reports of increased frequency of adverse drug events must be submitted in narrative form. The summaries must state the time period on which the increased frequency is based, time period comparisons in determining increased frequency, references to any previously submitted Form FDA 1932, the method of analysis, and the interpretation of the results. The summaries must be submitted in a separate section within the periodic drug experience report.

The following is the change to § 514.80(a)(4):

''(4) The requirements of this section also apply to any approved Type A medicated article. In addition, the requirements contained in § 514.80(b)(1), (b)(2), (b)(4)(iv), and (b)(4)(v) apply to any approved Type A medicated article incorporated in animal feeds.''

D. Definition of Serious Adverse Drug Experience (§ 514.3)

(Comment 4) One comment asked FDA to change the definition of a ''Serious adverse drug experience'' from ''an adverse event that is fatal or life threatening, requires professional intervention.'' to ''an adverse event that is fatal or is a life-threatening event that requires professional intervention.'' The comment stated that the listing of events ''adds confusion as to whether all or just one of the conditions need to be present for the event to meet the definition of serious.'' The comment questioned whether ''professional intervention'' is necessary for every listed condition in the definition for the event to be considered a serious ADE. Another comment asked that ''requires professional intervention'' be removed from the list since some events involving veterinary intervention are not serious.

In order to clarify the issue, FDA has added ''or'' between each term so that it is clear that each event listed is independent of any other event. Any one of the events listed will be considered a serious ADE. Both comments suggest that the ADE be considered serious only in the case where the fatal or life-threatening event requires professional intervention. FDA believes that a fatal or life-threatening event is serious regardless of whether professional intervention is sought for treatment. Thus, FDA will not change the definition to require professional intervention for each event. Events that are life threatening or that require professional intervention will be considered serious ADEs. FDA believes that any professional veterinary intervention is serious enough in nature to require reporting.

(Comment 5) One comment requested clarification of the portion of the definition that ''requires professional intervention'' as to whether this means that any reports from veterinarians to the applicant are considered serious.

FDA addressed this issue in comment 10 of the preamble in the interim final rule and added professional intervention to clarify the definition of seriousness for animal drugs. We believe that the definition is appropriate.

(Comment 6) One comment questioned whether ''infertility'' is a serious ADE. The comment stated that infertility following administration is rarely drug-related, and that many types of infertility would not be serious.

We disagree with the comment. Purebred producers (e.g., of cats, dogs, or cattle) would not want to use a product that may impair fertility unless necessary. Therefore, FDA believes that it is important to make label changes regarding fertility as quickly as possible, thus providing important labeling information for the end user. FDA will not remove ''infertility'' from the definition.

(Comment 7) One comment stated that the ''unique aspects of evaluating animals that are housed and managed as a group'' should be included in the definition. The comment proposed that FDA use the International Cooperation on Harmonization of Technical Requirements for Registration of Veterinary Medicinal Products (VICH) definition of serious ADE. The comment used an example situation in which the background frequency of death in animals not treated is higher than animals treated with the drug. FDA addressed a similar issue in the preamble of the interim final rule under comment 7. The VICH guidance documents are in early development, and once completed it is the intention of FDA to adopt and implement them in a manner consistent with its existing regulations. At this time, it is premature to adopt VICH definitions.

(Comment 8) One comment stated that a patient examination should not be considered professional intervention if there is no administration or dispensing of medications. According to the comment, this should not be the sole means of classifying an event as serious. The comment further stated that if there is an examination and no treatment is indicated by the veterinarian, then ''professional intervention in the outcome of the case has not occurred.''

An examination with no medical or surgical intervention/treatment or any treatment is a reportable ADE. If professional services of a veterinarian are engaged then this is considered an intervention incident. For example, if an over-the-counter (OTC) or prescription (Rx) drug product is given to the animal prior to veterinary intervention and an adverse drug reaction occurs, then the veterinarian, upon examination, may have important information concerning the event. As explained in the preamble of the interim final rule, FDA added the words ''professional intervention'' to clarify the definition of seriousness for animal drugs. FDA believes that the definition is appropriate.

The following is the change to the definition for ''serious adverse drug experience'' in § 514.3:

''*Serious adverse drug experience* is an adverse event that is fatal, or life-threatening, or requires professional intervention, or causes an abortion, or stillbirth, or infertility, or congenital anomaly, or prolonged or permanent disability, or disfigurement.''

E. Definition of Unexpected Adverse Drug Experience (§ 514.3)

(Comment 9) One comment suggested that FDA change the definition of ''Unexpected drug experience'' from ''an adverse event that is not listed in the current labeling for the new animal drug.'' to ''an adverse event that is not listed in the current labeling for the new animal drug or reported in its Freedom of Information Summary(ies).'' The comment highlighted the inclusion of the NADA file in the current rule's definition of ''unexpected drug experience'' and that those incidences referenced in the NADA file may not be captured on the label. Therefore, there is concern that this change from the current § 510.300(b)(2)(i) will increase the number of reports to the NADA file. There is also a concern that this would increase FDA's workload for labeling changes, especially for Type A medicated articles and OTC products. The comment maintained that it is inappropriate for FDA to exclude the NADA file, and include only the current label, from the definition since the freedom of information summary of the NADA file is publicly available. The comment further stated that it is inappropriate since the applicant is the primary source of the ADE and is responsible for determining if the report is unexpected.

We disagree with the comment. Although the freedom of information summary is a publicly available document, it is neither a practical substitute for a label, nor is it widely distributed and available with the label.

(Comment 10) One comment posed a scenario where an ADE is commonly recognized and not on the current label. It suggested that since the ADE is commonly recognized, it should be expected by FDA. The comment asked for the agency's expectation/position on this scenario.

FDA requires that recognized ADEs be on the label. It is the position of the Center for Veterinary Medicine (CVM) that any serious, unexpected ADE be reported under § 514.80(b)(2).

F. Applicability of Records and Reports Concerning Experience With Approved New Animal Drugs (§ 514.80(a)(1))

(Comment 11) One comment objected to the requirement of ''separate'' filing systems in the sentence ''Each applicant and nonapplicant must establish and maintain indexed, separate, and * * *'' The comment stated that this is a new requirement not present in the proposed rule for records and reports and it is not in § 514.300(a). Further, the comment argued that it is the applicant's decision to determine whether files are stored separately or as part of another filing system. The comment requested an explanation for this change, and proposed that the word ''separate'' be deleted.

It was not FDA's intention to make the determination as to whether files are stored separately or as part of another filing system. During FDA's review of comments on the proposed rule for records and reports concerning duplicate reporting, it was determined that the proposed § 514.82 (nonapplicant) information should be combined with proposed § 514.80 (applicant) information. The use of the word ''separate'' in this sentence was FDA's attempt to combine the information from proposed § 514.82 with § 514.80. Unfortunately, the combined verbiage has lead to this unintended reading by the commenter. Also, it was not FDA's intention that nonapplicants ''establish and maintain indexed, separate, and complete files containing full records of all information * * * of a new animal drug * * *'' It is the intention of FDA that nonapplicants ''establish and maintain indexed, separate, and * * *'' of only the information that they receive or otherwise obtain. Therefore, FDA has separated requirements for applicants from requirements for nonapplicants in order to clarify the meaning.

(Comment 12) One comment proposed that the clause ''* * * that has not been previously submitted as part of the NADA or ANADA'' be changed to ''* * * that has not been previously submitted as part of an investigational new animal drug (INAD) file, the NADA or ANADA.'' The comment expressed concern that the studies/information submitted to the INAD would be excluded from the exemption of being ''previously submitted'' until the sponsor incorporated the information by reference into the NADA/ANADA file.

FDA believes that changing the regulation to include INADs is outside the scope of this regulation. The scope of records and reports is for experiences with approved new animal drugs, not investigational uses. The consequences of adding INADs to this regulation would be that applicants of INADs would have to submit the information and data under § 514.80. Therefore, FDA will not change the regulation to include INADs.

The following is the change to (§ 514.80(a)(1)):

(a) *Applicability*. (1) Each applicant must establish and maintain indexed and complete files containing full records of all information pertinent to safety or effectiveness of a new animal drug that has not been previously submitted as part of the NADA or ANADA. Such records must include information from domestic as well as foreign sources.

Each nonapplicant must establish and maintain indexed and complete files containing full records of all information pertinent to safety or effectiveness of a new animal drug that is received or otherwise obtained by the nonapplicant. Such records must include information from domestic as well as foreign sources.

G. Three-Day NADA/ANADA Field Alert Report (§ 514.80(b)(1))

(Comment 13) One comment asked what district office should be notified for 3-day NADA/ANADA field alert reports for U.S.-approved products that are manufactured outside of the United States.

Applicants should contact their FDA district office to determine the procedure for reporting 3-day alerts.

H. Fifteen-Day NADA/ANADA Alert Report (§ 514.80(b)(2))

(Comment 14) One comment opposed the use of the terminology ''regardless of source of the information'' in the reporting requirement for 15-day NADA/ANADA alert reports. The comment stated that ''regardless of source'' is overly broad. According to the comment, an ADE found by an employee of the company while browsing a chat room on the Internet would have to be reported to FDA. The comment also expressed concern that serious adverse events outside the United States be reported to FDA within 15 days.

The phrase ''regardless of source'' was added to emphasize that the agency wanted all reports of ADEs. A legitimate source is an identifiable reporter, an identifiable product, and one or more ADEs in animals or humans, regardless of whether the source is the Internet. If the event is a serious, unexpected adverse drug event then it must be reported in a 15-day NADA/ANADA alert report. All domestic and foreign ADEs for the U.S.-approved application should be submitted under § 514.80(b)(2) or (b)(4)(iv).

(Comment 15) One comment requested that FDA elaborate on the requirement of submission of reports of ADEs from foreign sources as it relates to § 514.80(a)(2). The comment stated that this requirement is not consistent

with § 510.300 and will increase the number of reports.

The burden for reporting domestic and foreign ADEs is the same under § 510.300. Foreign ADEs are required to be reported under the current regulations, although this requirement is not stated as explicitly in the current regulation as under § 514.80(a)(2). FDA is adding the language concerning foreign sources in order to make the rule more clear.

(Comment 16) One comment requested that applicants should not have to report cases where the reporter believes that an event is not drug related and the reporter does not want the case to be filed with FDA.

The ADE must be reported regardless of whether or not the reporter considers it to be drug related, if it meets the definition of an ADE (see 21 CFR 514.3), or whether a caller wishes it not to be reported. FDA will provide assistance on a case-by-case basis for specific incidences that the applicant or other reporter still believes should be excluded.

I. Nonapplicant Report (§ 514.80(b)(3))

(Comment 17) One comment recommended that in order to avoid confusion and over-reporting, all ADE reports should be submitted to CVM by the applicant, and that the sentence ''if the nonapplicant elects to also report directly to FDA, the nonapplicant should submit the report on Form FDA 1932 within 15 working days of first receiving the information'' should be deleted from the regulation. The comment maintained that if the nonapplicant reports to FDA in the 15-day period and it is determined by the applicant that it is not a serious, unexpected event, FDA might come to the conclusion that the applicant is under-reporting.

FDA does not concur with this recommendation. FDA believes that it is important for the nonapplicant to have a mechanism to report voluntarily. FDA will evaluate any nonapplicant report it receives to determine whether the report is of a serious, unexpected ADE.

J. Periodic Drug Experience Report—Distribution Data (§ 514.80(b)(4)(i))

(Comment 18) One comment questioned the need to report distribution data on the amounts of product exported outside the United States, and if the data are to be reported, how they will be used. The comment stated that since foreign ADEs are not required to be reported, there is no benefit for reporting amounts exported.

Foreign reports have to be submitted under § 514.80. Foreign ADEs for the U.S.-approved application must be submitted under § 514.80(b)(2) or (b)(4)(iv). These data will be used in a similar manner as domestic distribution data in determining if an increased frequency of ADE exists.

K. Periodic Drug Experience Report—Nonclinical Laboratory Studies and Clinical Data Not Previously Reported (§ 514.80(b)(4)(iii))

(Comment 19) One comment maintained that studies conducted to support a future claim should not be reported in the periodic drug experience report. The comment suggested that because sponsors make submissions to CVM's Office of New Animal Drug Evaluation (ONADE) for its review, and also report to CVM's Office of Surveillance and Compliance, the confusion could be eliminated by changing the title of this section from ''Nonclinical laboratory studies and clinical data not previously reported'' to ''Nonclinical laboratory studies and clinical data not previously submitted.''

FDA believes that such a change is not necessary. This requirement only pertains to data not previously reported to CVM, including submissions to ONADE and reports to the Office of Surveillance and Compliance.

L. Periodic Drug Experience Report—Nonclinical Laboratory Studies and Clinical Data Not Previously Reported—Prepublication Manuscripts (§ 514.80(b)(4)(iii)(C))

(Comment 20) One comment questioned the value and need to submit prepublication manuscripts and strongly recommended deletion of this requirement. The comment stated that such manuscripts are no better than draft reports and submission of these to entities other than the publisher may be prohibited by a journal in its publication policy. Additionally, it stated that the applicant could comply with the requirements for submission of a study within 1 year of its completion only when the study is conducted by or for the applicant.

FDA concurs with the recommendation and has revised this section of the regulation.

The following is the change to § 514.80(b)(4)(iii)(C):

(C) Descriptions of completed clinical trials conducted by or for the applicant must be submitted no later than 1 year after completion of research. Supporting information is not to be reported.

M. Periodic Drug Experience Report—Adverse Drug Experiences (§ 514.80(b)(4)(iv))

(Comment 21) One comment stated that FDA limited the scope of a manufacturing/product defect by changing the definition in § 514.80(g) in response to comment 12 of the interim final rule. The comment stated, ''the scope of what is considered to be a manufacturing/product defect has now been limited to that which is a problem associated with public health or animal safety or that is a significant, chemical, physical, or other change or deterioration in the drug product or significant defective packaging or labeling error.'' According to the comment, nonsignificant defects, which involve the physical appearance but have no impact on animal safety or public health, do not need to be reported since these defects are not included in the definition of manufacturing/product defects. The comment provided a specific example of a blister unit with a misaligned die-cut of a blister, which does not affect the integrity of the package seal or labeling or an empty blister well.

Manufacturing/product defects are defined in § 514.3. If a problem with the product does not fall under the definition in § 514.3, then it is not considered a manufacturing/product defect. The example of a misaligned die-cut of a blister unit may or may not be considered a manufacturer/product defect depending on whether it is or is not a deviation of a distributed product from the standard specified in the approved application or any other portion of the definition. Manufacturing/product defects that may result in a serious adverse drug event must be submitted as a 3-day NADA/ANADA field alert report. The requirement of a serious adverse drug event limits the number of 3-day reports. Nonserious manufacturing/product defects should be submitted in the periodic drug experience report. The manufacturing/product defects definition given in § 514.3 does not pertain to the good manufacturing practice (GMP) regulations or other regulations outside of § 514.80.

N. Periodic Drug Experience Report—Adverse Drug Experiences Not Previously Reported (§ 514.80(b)(4)(iv)(A))

(Comment 22) One comment suggested that product/manufacturing defects, other than serious ones, should not have to be reported. FDA stated in the preamble of the interim final rule that FDA would limit its scope to

problems associated with public health or animal safety. According to the comment, the requirement of reporting product/manufacturing defects, other than serious ones, is not consistent with FDA's statement. The comment requested that 21 CFR 514.80(b)(4)(iv)(A) refer only to ADEs.

FDA declines to make the proposed change because eliminating the provision as requested would leave a significant gap in the safety and effectiveness profile of a drug product. The agency would no longer receive information for product and manufacturing defects that may result in ''nonserious'' but significant unexpected adverse drug events, i.e., events not listed on the label of a particular drug product. These could include new symptoms and pathophysiologically-related events such as increases in enzymes or blood counts that appear not to be serious by definition, but could negatively impact the effect of the drug product. Further, the applicant would not have to report product and manufacturing defects that may result in a lack of expected effectiveness.

O. Periodic Drug Experience Report—Adverse Drug Experiences in the Literature (§ 514.80(b)(4)(iv)(B))

(Comment 23) One comment stated that applicants routinely have not submitted ADEs separate from the literature. According to the comment, applicants have limited ability to investigate incidents such as studies conducted by unrelated third parties. The comment requested that this section be deleted or reworded to clarify FDA's intent.

FDA is not requesting that each individual ADE in the literature be submitted on Form FDA 1932. The use of Form FDA 1932 does not apply to § 514.80(b)(4)(iv)(B). As the rule states, FDA is asking that ''a bibliography of pertinent references'' of the literature containing ADEs be submitted. A bibliographic listing from Medline or other database searches would be acceptable.

P. Periodic Drug Experience Report—Adverse Drug Experiences Occurring in Postapproval Studies That Are Not Previously Reported (§ 514.80(b)(4)(iv)(C))

(Comment 24) One comment noted that reporting ADEs from postapproval studies is duplicate reporting given that the study report is submitted to ONADE. The comment contended that this would be a considerable additional workload, especially for the first 2 years postapproval. Also, if this reporting requirement is not changed, the comment asked if FDA wanted these reports on Form FDA 1932. FDA disagrees that this would be additional work. This requirement only pertains to ADEs not previously reported to CVM. Any study reports previously submitted to ONADE do not have to be submitted again. Applicants are not required to submit these experiences on Form FDA 1932.

Q. Other Reporting—Advertisements and Promotional Labeling (§ 514.80(b)(5)(ii))

(Comment 25) One comment stated that the regulation is not clear about the submission requirements for OTC and Rx promotional labeling. Further, the comment requested that the promotional labeling requirement be applicable to Rx products only, in accordance with current regulations.

FDA believes that the regulation is clear about the submission requirement for OTC and Rx labeling. FDA declines to change the applicability to Rx products only. This is not a new proposal; it was included in the proposed rule for records and reports.

R. Other Reporting—Distributor's Statement—Current Product Labeling (§ 514.80(b)(5)(iii)(A)(1))

(Comment 26) One comment suggested that, with regard to distributor's labeling, the qualifying phrase should not be limited to ''manufactured for'' or ''distributed by.'' The comment argued that § 201.1(h)(5) (21 CFR 201.1(h)(5)) provides the appropriate alternatives, which should also be permitted, and recommended that the last sentence in this section be changed.

The agency concurs with the proposed revision and has revised this section.

The following is the change to § 514.80(b)(5)(iii)(A)(*1*):

(1) The distributor's labeling must be identical to that in the approved NADA/ANADA except for a different and suitable proprietary name (if used) and the name and address of the distributor. The name and address of the distributor must be preceded by an appropriate qualifying phrase as permitted by the regulations such as ''manufactured for'' or ''distributed by.''

S. Other Reporting—Distributor's Signed Statements (§ 514.80(b)(5)(iii)(B)(2) and (b)(5)(iii)(B)(3))

(Comment 27) One comment noted that the current regulation § 514.8(a)(6)(iii) (21 CFR 514.8(a)(6)(iii)) requires the distributor to state that he/she will distribute the drug only under its approved labeling and that any other labeling or advertising will prescribe, recommend, or suggest use only under the approved labeling. According to the comment, § 514.80(b)(5)(iii)(B)(*2*) and (b)(5)(iii)(B)(*3*) of the interim final rule omits the limitation on promotional labeling. The comment suggested that the language of 21 CFR 514.8(a)(6)(iii) be changed so that paragraph (b)(5)(iii)(B)(*3*) would read as follows: ''(3) that the distributor will distribute the product only for use under the conditions stated in the approved labeling, and any other labeling or advertising will prescribe, recommend, or suggest its use only under the approved labeling.''

The agency believes that the provisions of paragraph (b)(5)(iii)(B)(*3*) of the proposed rules are similar to those of § 514.8(a)(6)(iii), but have been simplified and written in plain language. However, to make the meaning clear, the agency has revised the section by replacing the word ''advertise'' with ''promote.''

The following is the change to § 514.80(b)(5)(iii)(B)(*3*):

''(3) That the distributor will promote the product only for use under the conditions stated in the approved labeling;''

T. Multiple Applications—Information Specific to a Particular NADA/ANADA (§ 514.80(c)(4))

(Comment 28) One comment stated that the requirements under ''Multiple Applications'' do not appear to decrease, but may increase the burden on the applicant. In particular, the comment questioned the requirement under § 514.80(c)(4) and requested clarification. The comment also expressed concern with the increased reporting burden due to the increasing number of approved combinations of drugs for use in feeds since the implementation of the ADAA. Further complicating the reporting issue is that frequently there are nonapplicants involved in the marketing of these combinations. The comment stated that, with the exception of ''promotional literature,'' there is rarely any other information to be reported. The comment suggested that the ''promotional literature'' be submitted to the application held by either party—i.e., the nonapplicants or applicant—and not the application approved for the use of the combination of drugs.

The provision of the regulation in question is currently codified under § 510.300(b)(4)(ii). The current regulation and the proposal in the interim final rule are similar. There is no increase of the reporting burden. It is not the intention of FDA for the

implementation of § 514.80(c) to be different from the current requirement under § 510.300(b)(4)(ii). Only information specific to a particular NADA/ANADA that is not common to all the applications must be included in the report for that particular NADA/ANADA, for example, labeling. With regard to the comment that there is an increased reporting burden due to the ADAA, increased reporting is due to the increased number of approved applications, and not due to different requirements. FDA consequently believes that this is a reasonable reporting requirement.

U. Records to Be Maintained and Access to Records and Reports (§ 514.80(e) and (f))

(Comment 29) One comment asked where the primary repository for foreign report records (United States versus the foreign country) would reside.

Sponsors should keep records wherever it is their customary business practice to keep them as long as the records are available to FDA for inspection.

V. General Comments on the Regulation

(Comment 30) One comment requested that CVM adopt procedures for waiving the reporting of ADEs for NADAs/ANADAs. The comment suggested adopting procedures similar to FDA's Center for Drug Evaluation and Research's March 2001 draft publication entitled ''Guidance for Industry on Postmarketing Safety Reporting for Human Drug and Biological Products Including Vaccines.'' This guidance states that applicants under certain conditions may request waivers from submission of full ADE reports that are both nonserious and labeled.

We disagree with the comment. The procedures in the draft guidance cited by the commenter only waive reporting such adverse experiences on FDA Form 3500A. The applicant still must collect and report these adverse experiences by providing a summary tabulation by body system and a narrative discussion about all adverse experiences in the periodic report. FDA also may request that the applicant submit these reports on the human form (FDA Form 3500A) within 5 calendar days after receipt of the agency's request. The final records and reports rule does not include such a summary tabulation or narrative discussion requirement. We believe that adding such a requirement would impose a greater burden on the regulated industry than the requirement of reporting such adverse events on Form FDA 1932 in periodic reports. Further, we believe it is crucial that all adverse drug experience information be submitted in a consistent manner and format to facilitate the agency's analysis of the information. For these reasons, we have not adopted the change proposed by this comment.

(Comment 31) One comment asked if ADEs and product defects for unapproved products, which meet the requirements of 21 CFR part 801(e)(1) of the act, should be reported.

No, this regulation only pertains to approved new animal drugs.

(Comment 32) One comment asked if a validated electronic signature in compliance with part 11 (21 CFR part 11) would suffice for an authorized signature on Form FDA 1932.

Yes, an electronic signature that is compliant with part 11 will be acceptable.

(Comment 33) One comment apparently has misinterpreted the table that outlines the purpose of each paragraph. In particular, the comment indicated belief that the purpose given for § 514.80(b)(1) also pertained to the next line § 514.80(b)(2).

FDA believes that the commenter has simply misinterpreted the table. Section 514.80(b)(1) and (b)(2) are separate line items in the table. The confusion appears to be because the purpose column for § 514.80(b)(2) is blank because the subsequent three titles are subsections of § 514.80(b)(2), i.e., § 514.80(b)(2)(i) through (b)(2)(iii). Thus, a blank in the purpose column does not mean the preceding description applies. For clarity's sake, however, FDA has added the phrase ''See paragraphs below'' in place of the blank spaces.

III. Summary of the Final Rule

FDA is withdrawing the interim final rule on its requirements for records and reports concerning experiences with approved new animal drugs (67 FR 5046) and is issuing this final rule. This final rule represents a modification of the withdrawn interim final rules. The modifications in the final rule include: Revising the definitions of ''applicant'' and ''serious adverse drug experience;'' modifying the reporting requirement for summary reports of increased frequency of ADEs; clarifying what safety and efficacy records a nonapplicant versus an applicant must maintain; eliminating the requirement of submission of prepublication manuscripts relating to completed clinical trials; changing distributor's labeling so that the qualifying phrase that must precede the name and address of the distributor is as permitted by § 201.1; and revising the section of the rule pertaining to distributor's signed statements to state that the distributor will promote the product only for use under the conditions stated in the approved labeling.

IV. Conforming Changes

With the amendment of the animal drug regulations, certain revisions to parts 226, 510, and 514 (21 CFR parts 226, 510, and 514) and 21 CFR part 211 are required to conform to the designations in the amendments. Certain other provisions of part 510 and § 514.8 are superseded by these regulations and are removed.

V. Environmental Impact

FDA has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

VII. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612) and the Unfunded Mandates Reform Act (Public Law 104–4). The Office of Management and Budget (OMB) has determined that this final rule is a significant regulatory action subject to review under Executive Order 12866. FDA also certifies in accordance with the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities, and therefore, a regulatory flexibility analysis is not required. Further, the Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for the final rule because it is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The

current inflation-adjusted statutory threshold is about $110 million.

The regulation is intended to clarify and simplify recordkeeping requirements while improving the protection of public and animal health. The revisions in the reporting requirements are expected to provide savings through lower recordkeeping costs in some areas while imposing small cost increases due to requirements for recordkeeping of more useful information.

In the rule, the term ''applicant'' is limited to the holder of an approved application (NADA or ANADA) and does not include every firm whose name appears on product labeling, as the regulations previously provided. A nonapplicant is required to send copies of necessary information to the applicant who would then combine all information received, whether from one or several sources, and submit a single report to FDA. This change would reduce paperwork requirements because firms would be required to submit fewer reports. Also, those reports should provide for a more comprehensive reporting of all required information.

The current requirement for ADE reports to be submitted by distributors is retained under the final rule in § 514.80(b)(3) in nonapplicant reporting. The requirement for any firm involved in the manufacturing, processing, packing, labeling, or distributing of a new animal drug product other than the applicant (the nonapplicant) to report adverse experiences either to FDA or to the applicant is a restatement of the previous provisions of § 510.300(f) that applies to a small number of firms that would not routinely be expected to receive such information. The restatement is intended to clearly state that any such information received is required to be reported to FDA, either directly or through the applicant. However, only one party would be required to file the report.

The revised regulations amend the language of the regulations to clarify current practices. The conformity of reporting requirements for animal drugs and human drugs may simplify the process for firms that manufacture both kinds of products. No added costs are expected for those firms that only manufacture new animal drug products. In the past, FDA has required that records and reports be retained for an indefinite period. The proposed rule provided for a retention period of 10 years. In response to industry comments, FDA changed this requirement in the interim final rule to 5 years for all information. This would provide an additional opportunity for savings compared to the proposed rule. No additional comments were received on this issue, and the 5-year retention period has been retained in the final rule. Since the current average length of time which records are kept is unknown, it is possible that there will be a small net cost due to this provision, even though the reporting requirements are clarified for easier compliance and administration.

The previously existing regulation required reports concerning newly approved NADAs and ANADAs every 6 months for the first year and annually thereafter. The proposed rule for records and reports would have required submission of such reports at quarterly intervals for 3 years following approval. FDA agrees with comments from industry that the proposed rule's requirement of reports at quarterly intervals for 3 years following approval was unnecessary, and the agency decreased the reporting requirements in the interim final rule. No additional comments were received on this issue. The final rule requires reports of ADEs to be submitted every 6 months for 2 years and annually thereafter.

The net change from the previous regulation requires one additional report in the second year. FDA estimates that it approves 30 NADAs annually. FDA estimates that 13.6 hours are required to establish and maintain the drug experience data, as well as write the report. Total hours required for this provision are estimated at 408. At a middle manager's estimated total wage rate of about $35 per hour, this provision would cost $14,280 annually. Moreover, applicants may petition for lengthier report intervals. FDA will provide for reporting at intervals longer than 1 year when justified based on current experience or manufacturing and marketing status. The expected number of petitions for reporting at intervals greater than 1 year is difficult to estimate because it depends on the extent to which each individual company wishes to qualify for this provision. The net result of these two provisions may be either a very small cost or savings to each firm.

The interim final rule would have required applicants to periodically review the incidence of ADEs and report any significant increase in the frequency to FDA as soon as possible or within 15 working days of determining a significant increase in frequency exists. In response to comments, the final rule provides more flexibility to industry by allowing these reports to be submitted in the periodic drug experience reports rather than within the 15-day period. FDA expects to receive very few of these reports each year and estimates that the annual number will be between 1 and 20. These reports would not be expected to take more than 1 to 2 hours of a manager's time, and the high-end estimated cost to industry would be $1,400 annually. Periodic review of ADE reports, although on a less formal basis, is currently understood to be normal business practice.

The net costs and benefits of this final rule, though indeterminate, are expected to be modest. FDA concludes that the impacts of the final rule do not qualify it as an economically significant rule as defined under Executive Order 12866.

The Regulatory Flexibility Act, as amended (5 U.S.C. 601–612), allows for a waiver of the regulatory flexibility analysis if an agency certifies there will not be a significant impact on a substantial number of small entities as a result of a rule, as well as provides the factual basis for such a certification. The Small Business Administration definition of a small business in this industry category is limited to those firms with less than 750 employees. It is expected that a substantial number of the firms that will be subject to the new recordkeeping and reporting requirements will meet the definition of small businesses. FDA estimates that from 1 to 13 of the approximately 30 NADA and ANADA approvals in 1999 may have been from small businesses. Using the upper end of this range, about 42 percent of the firms receiving approval annually would be subject to the new recordkeeping and reporting requirements. This regulation is not expected to have a significant economic impact on these firms because the final rule is intended to simplify and clarify current recordkeeping and reporting requirements. The net costs and benefits on each small firm are expected to be modest. Accordingly, FDA certifies in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612) that this rule will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis, therefore, is not required.

VIII. Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). A description of these provisions is given below. Included is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and

reviewing each collection of information.

Title: Records and Reports Concerning Experience With Approved New Animal Drugs.

Description: This final rule amends the provisions of the animal drug regulations concerning requirements for recordkeeping and reports concerning experience with approved new animal drugs. The information contained in the reports required by this rule enables FDA to monitor the use of new animal drugs after approval and to ensure their continued safety and efficacy. The reporting requirements include: A report that provides information on product and manufacturing defects that may result in serious adverse drug events within 3 days of becoming aware the defect exists (new § 514.80(b)(1)); a report that provides information on serious and unexpected adverse drug events and a followup report on such events (new § 514.80(b)(2)); a summary report of increased frequency of ADEs (new § 514.80(b)(4)(v)); a report from nonapplicants, such as distributors, to applicants providing information on ADEs (new § 514.80(b)(3)); a periodic report with information on distribution, labeling, manufacturing or controls changes, new laboratory studies, and all adverse events in the reporting period (new § 514.80(b)(4)); and other reports that include special drug experience reports; reports for advertising and promotional labeling, and reports for distributor statements (new § 514.80(b)(5)). These reports must be kept for 5 years (new § 514.80(e)).

The final rule strengthens the current reporting system by requiring periodic reports every 6 months for the first 2 years following initial approval of an application rather than just for the first year following initial approval. The increased burden on applicants amounts to one additional periodic report. While greater than the reporting burden in the previous rule, this burden is less than that of the proposed rule which would have required quarterly periodic reports for 3 years following initial approval.

All periodic reports must be submitted with Form FDA 2301, ''Transmittal of Periodic Reports and Promotional Materials for New Animal Drugs'' (OMB control number 0910–0012). ADE reports must be submitted on Form FDA 1932, ''Veterinary Adverse Drug Reaction, Lack of Effectiveness, Product Defect Report'' (OMB control number 0910–0012).

In the **Federal Register** of February 4, 2002, FDA invited comments on the interim final rule and the information collection requirements. Only one comment received pertained to information collection. That comment stated that the requirements under ''Multiple Applications'' do not appear to decrease but may increase the burden on the applicant. In particular, the comment questioned the requirement under § 514.80(c)(4) and requested clarification. The comment also voiced concern about an increased reporting burden due to the increasing number of approved applications for combinations of drugs for use in feeds since the implementation of the ADAA. Further complicating the reporting issue is that frequently there are nonapplicants involved in the marketing of these combinations. The comment stated that with the exception of ''promotion literature,'' there is rarely any other information to be reported, suggesting that the ''promotion literature'' be submitted to the application held by either party, i.e., the nonapplicants or applicant, and not the application approved for the use of the combination of drugs.

In response, FDA notes that the provision of the regulation in question is currently codified under § 510.300(b)(4)(ii). The current regulation and the proposal in the interim final rule are similar. There is no increase of the reporting burden. It is not the intention of FDA for the implementation of § 514.80(c) to be different than the current requirement under § 510.300(b)(4)(ii). Only information specific to a particular NADA/ANADA that is not common to all the applications must be included in the report for that particular NADA/ANADA, for example, labeling. With regard to the comment that there is an increased reporting burden due to the ADAA, increased reporting is due to the increased number of approved applications, and not due to different requirements. FDA consequently believes that this is a reasonable reporting requirement.

Description of Respondents: Applicant respondents are sponsors of approved NADAs and ANADAs. Nonapplicant respondents are those, other than the applicant, involved in manufacturing, processing, packing, labeling, or distributing new animal drugs.

RECORDS AND REPORTS CONCERNING EXPERIENCE WITH APPROVED NEW ANIMAL DRUGS

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section/Title/FDA Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
514.80(b)(2)(i)/Original 15-Day Alert Report/Form FDA 1932	190	55.26	12,283	1	12,283
514.80(b)(1)/3-Day Field Alert Report/ Form FDA 1932	190	0.32	95	1	95
514.80(b)(2)(ii)/Followup 15-Day Alert Report/Form FDA 1932	190	17.90	6,007	1	6,007
514.80(b)(3)/Nonapplicant Report/ Form FDA 1932	340	2.94	1,000	1	1,000
514.80(b)(4)/Periodic Drug Experience Report/Form FDA 2301, and 514.80(c) Multiple Applications[2]	190	7.11	1,226	11	13,486
514.80(b)(4)(v)/Summary Report of Increased Frequency of Adverse Drug Experience	190	1.58	300	2	600
514.80(b)(5)(i)/Special Drug Experience Report/ Form FDA 2301	190	0.13	25	2	50

RECORDS AND REPORTS CONCERNING EXPERIENCE WITH APPROVED NEW ANIMAL DRUGS—Continued

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section/Title/FDA Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
514.80(b)(5)(ii)/Advertising and Promotional Materials Report/ Form FDA 2301	190	2.11	772	2	1,544
514.80(b)(5)(iii)/Distributor's Statement Report/ Form FDA 2301	530	0.14	56	2	112
Total					35,177

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] The reporting burden for § 514.80(b)(4)(iv)(A) is included in the reporting burden for § 514.80(b)(2)(i).

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency of Response	Total Annual Responses	Hours per Response	Total Hours
514.80(e)[2]	530	28.22	19,385	0.5	9,693
514.80(e)[3]	530	4.06	2,379	10.35	24,623
Total					34,316

[1] Burden estimates were separated between Form FDA 1932 and Form FDA 2301 to reflect the difference in estimates for ''Hours per Respondent'' required.
[2] Recordkeeping estimates for § 514.80(b)(1), (b)(2)(i), (b)(2)(ii), and (b)(3); Form FDA 1932.
[3] Recordkeeping estimates for § 514.80(b)(2)(iii), (b)(4), (b)(5), and (c); Form FDA 2301.

Forms FDA 1932 and FDA 2301 for this collection of information are currently approved under OMB control number 0910–0012 and will not change due to implementation of this regulation. The reporting and recordkeeping burden estimates in this document are based on the submission of reports to the Division of Surveillance, CVM. The total annual response numbers are based on the 2000 fiscal year submission of reports to the Division of Surveillance, CVM. The numbers in tables 1 and 2 of this document are total burden associated with this regulation. Section 514.80(b)(3) and (b)(4)(v) are new information collection requirements over the current requirements.

The information collection provisions of this final rule have been submitted to OMB for review. FDA will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions in this final rule. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

List of Subjects

21 CFR Part 211

Drugs, Labeling, Laboratories, Packaging and containers, Prescription drugs, Reporting and recordkeeping requirements, Warehouses.

21 CFR Part 226

Animal drugs, Animal feeds, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 514

Administrative practice and procedure, Animal drugs, Confidential business information, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 211, 226, 510, and 514 are amended as follows:

PART 211—CURRENT GOOD MANUFACTURING PRACTICE FOR FINISHED PHARMACEUTICALS

■ 1. The authority citation for 21 CFR part 211 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 360b, 371, 374.

§ 211.198 [Amended]

■ 2. Section 211.198 *Complaint files* is amended in paragraph (a) in the last sentence by removing ''in accordance with § 310.305 of this chapter'' and adding in its place ''in accordance with §§ 310.305 and 514.80 of this chapter.''

PART 226—CURRENT GOOD MANUFACTURING PRACTICE FOR TYPE A MEDICATED ARTICLES

■ 3. The authority citation for 21 CFR part 226 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 360b, 371, 374.

■ 4. Section 226.1 is amended by redesignating the existing text as paragraph (a) and by adding paragraph (b) to read as follows:

§ 226.1 Current good manufacturing practice.

* * * * *

(b) In addition to maintaining records and reports required in this part, Type A medicated articles requiring approved NADAs are subject to the requirements of § 514.80 of this chapter.

PART 510—NEW ANIMAL DRUGS

■ 5. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.300 [Removed]

■ 6. Section 510.300 *Records and reports concerning experience with new animal drugs for which an approved application is in effect* is removed.

§ 510.302 [Removed]

■ 7. Section 510.302 *Reporting forms* is removed.

PART 514—NEW ANIMAL DRUG APPLICATIONS

■ 8. The authority citation for 21 CFR part 514 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e, 381.

■ 9. Section 514.3 is added to read as follows:

§ 514.3 Definitions.

The definition and interpretation of terms contained in this section apply to those terms as used throughout subchapter E.

Adverse drug experience is any adverse event associated with the use of a new animal drug, whether or not considered to be drug related, and whether or not the new animal drug was used in accordance with the approved labeling (i.e., used according to label directions or used in an extralabel manner, including but not limited to different route of administration, different species, different indications, or other than labeled dosage). Adverse drug experience includes, but is not limited to:

(1) An adverse event occurring in animals in the course of the use of an animal drug product by a veterinarian or by a livestock producer or other animal owner or caretaker.

(2) Failure of a new animal drug to produce its expected pharmacological or clinical effect (lack of expected effectiveness).

(3) An adverse event occurring in humans from exposure during manufacture, testing, handling, or use of a new animal drug.

ANADA is an abbreviated new animal drug application including all amendments and supplements.

Applicant is a person or entity who owns or holds on behalf of the owner the approval for an NADA or an ANADA, and is responsible for compliance with applicable provisions of the act and regulations.

Increased frequency of adverse drug experience is an increased rate of occurrence of a particular serious adverse drug event, expected or unexpected, after appropriate adjustment for drug exposure.

NADA is a new animal drug application including all amendments and supplements.

Nonapplicant is any person other than the applicant whose name appears on the label and who is engaged in manufacturing, packing, distribution, or labeling of the product.

Product defect/manufacturing defect is the deviation of a distributed product from the standards specified in the approved application, or any significant chemical, physical, or other change, or deterioration in the distributed drug product, including any microbial or chemical contamination. A manufacturing defect is a product defect caused or aggravated by a manufacturing or related process. A manufacturing defect may occur from a single event or from deficiencies inherent to the manufacturing process. These defects are generally associated with product contamination, product deterioration, manufacturing error, defective packaging, damage from disaster, or labeling error. For example, a labeling error may include any incident that causes a distributed product to be mistaken for, or its labeling applied to, another product.

Serious adverse drug experience is an adverse event that is fatal, or life-threatening, or requires professional intervention, or causes an abortion, or stillbirth, or infertility, or congenital anomaly, or prolonged or permanent disability, or disfigurement.

Unexpected adverse drug experience is an adverse event that is not listed in the current labeling for the new animal drug and includes any event that may be symptomatically and pathophysiologically related to an event listed on the labeling, but differs from the event because of greater severity or specificity. For example, under this definition hepatic necrosis would be unexpected if the labeling referred only to elevated hepatic enzymes or hepatitis.

§ 514.8 [Amended]

■ 10. Section 514.8 *Supplemental new animal drug applications* is amended in paragraph (a)(1) by removing ''§ 510.300(a) of this chapter'' and by adding in its place ''§ 514.80''; in paragraph (a)(5) by removing ''§ 510.300(b)(4) of this chapter'' and by adding in its place ''§ 514.80(b)(4)''; in paragraph (a)(5)(ix) by removing ''§ 510.300(b)(1) of this chapter'' and by adding in its place ''§ 514.80(b)(1)''; and by revising paragraph (a)(6) to read as follows:

(a) * * *

(6) Approval of a supplemental new animal drug application will not be required to provide for an additional distributor to distribute a drug which is the subject of an approved new animal drug application if the conditions described in § 514.80(b)(5)(iii) are met before putting such a change into effect.

* * * * *

§ 514.11 [Amended]

■ 11. Section 514.11 *Confidentiality of data and information in a new animal drug application file* is amended in paragraph (a) by removing ''510.300'' and adding in its place ''514.80''.

§ 514.15 [Amended]

■ 12. Section 514.15 *Untrue statements in applications* is amended in paragraph (b) by removing ''§ 510.300'' and adding in its place ''§ 514.80''.

■ 13. Section 514.80 is added to subpart B to read as follows:

§ 514.80 Records and reports concerning experience with approved new animal drugs.

The following table outlines the purpose for each paragraph of this section:

Purpose	21 CFR Paragraph and Title
What information must be reported concerning approved NADAs or ANADAs?	514.80(a) Applicability.
What authority does FDA have for requesting records and reports? Who is required to establish, maintain, and report required information relating to experiences with a new animal drug? Is information from foreign sources required?	514.80(a)(1).
What records must be established and maintained and what reports filed with FDA?	514.80(a)(2).
What is FDA's purpose for requiring reports?	514.80(a)(3).
Do applicants of Type A medicated articles have to establish, maintain, and report information required under § 514.80?	514.80(a)(4).

Purpose	21 CFR Paragraph and Title
How do the requirements under § 514.80 relate to current good manufacturing practices?	514.80(a)(5).
	514.80(b) Reporting requirements.
What are the requirements for reporting product/manufacturing defects?	514.80(b)(1) Three-day NADA/ANADA field alert report.
	514.80(b)(2) Fifteen-day NADA/ANADA alert report.
What are the requirements for reporting serious and unexpected adverse drug experiences?	514.80(b)(2)(i) Initial report.
What are the requirements for followup reporting of serious and unexpected adverse drug experiences?	514.80(b)(2)(ii) Followup report.
What are the requirements for nonapplicants for reporting adverse drug experiences?	514.80(b)(3) Nonapplicant report.
What are the general requirements for submission of periodic drug experience reports, e.g., forms to be submitted, submission date and frequency, when is it to be submitted, how many copies? How do I petition to change the date of submission or frequency of submissions?	514.80(b)(4) Periodic drug experience report.
What must be submitted in the periodic drug experience reports?	514.80(b)(4)(i) through (b)(4)(iv).
What distribution data must be submitted? How should the distribution data be submitted?	514.80(b)(4)(i) Distribution data.
What labeling materials should be submitted? How do I report changes to the labeling materials since the last report?	514.80(b)(4)(ii) Labeling.
	514.80(b)(4)(iii) Nonclinical laboratory studies and clinical data not previously reported.
What are the requirements for submission of nonclinical laboratory studies?	514.80(b)(4)(iii)(A).
What are the requirements for submission of clinical laboratory data?	514.80(b)(4)(iii)(B).
When must results of clinical trials conducted by or for the applicant be reported?	514.80(b)(4)(iii)(C).
	514.80(b)(4)(iv) Adverse drug experiences.
How do I report product/manufacturing defects and adverse drug experiences not previously reported to FDA?	514.80(b)(4)(iv)(A).
What are the requirements for submitting adverse drug experiences cited in literature?	514.80(b)(4)(iv)(B).
What are the requirements for submitting adverse drug experiences in postapproval studies and clinical trials?	514.80(b)(4)(iv)(C).
What are the requirements for reporting increases in the frequency of serious, expected, and unexpected adverse drug experiences?	514.80(b)(4)(v) Summary report of increased frequency of adverse drug experience.
	514.80(b)(5) Other reporting.
Can FDA request that an applicant submit information at different times than stated specifically in this regulation?	514.80(b)(5)(i) Special drug experience report.
What are the requirements for submission of advertisement and promotional labeling to FDA?	514.80(b)(5)(ii) Advertisements and promotional labeling.
What are the requirements for adding a new distributor to the approved application?	514.80(b)(5)(iii) Distributor's statement.
What labels and how many labels need to be submitted for review?	514.80(b)(5)(iii)(A).
What changes are required and allowed to distributor labeling?	514.80(b)(5)(iii)(A)(*1*).
What are the requirements for making other changes to the distributor labeling?	514.80(b)(5)(iii)(A)(*2*).
What information should be included in each new distributor's signed statement?	514.80(b)(5)(iii)(B)(*1*) through (b)(5)(iii)(B)(*5*).
What are the conditions for submitting information that is common to more than one application? (i.e., can I submit common information to one application?)	514.80(c) Multiple applications.
What information has to be submitted to the common application and related application?	514.80(c)(1) through (c)(4).

Purpose	21 CFR Paragraph and Title
What forms do I need? What are Forms FDA 1932 and 2301? How can I get them? Can I use computer-generated equivalents?	514.80(d) Reporting forms.
How long must I maintain Form FDA 1932 and records and reports of other required information, i.e., how long do I need to maintain this information?	514.80(e) Records to be maintained.
What are the requirements for allowing access to these records and reports, and copying by authorized FDA officer or employee?	514.80(f) Access to records and reports.
How do I obtain Forms FDA 1932 and 2301? Where do I mail FDA's required forms, records, and reports?	514.80(g) Mailing addresses.
What happens if the applicant fails to establish, maintain, or make the required reports? What happens if the applicant refuses to allow FDA access to, and/or copying and/or verify records and reports?	514.80(h) Withdrawal of approval.
Does an adverse drug experience reflect a conclusion that the report or information constitutes an admission that the drug caused an adverse effect?	514.80(i) Disclaimer.

(a) *Applicability*. (1) Each applicant must establish and maintain indexed and complete files containing full records of all information pertinent to safety or effectiveness of a new animal drug that has not been previously submitted as part of the NADA or ANADA. Such records must include information from domestic as well as foreign sources. Each nonapplicant must establish and maintain indexed and complete files containing full records of all information pertinent to safety or effectiveness of a new animal drug that is received or otherwise obtained by the nonapplicant. Such records must include information from domestic as well as foreign sources.

(2) Each applicant must submit reports of data, studies, and other information concerning experience with new animal drugs to the Food and Drug Administration (FDA) for each approved NADA and ANADA, as required in this section. A nonapplicant must submit data, studies, and other information concerning experience with new animal drugs to the appropriate applicant, as required in this section. The applicant, in turn, must report the nonapplicant's data, studies, and other information to FDA. Applicants and nonapplicants must submit data, studies, and other information described in this section from domestic, as well as foreign sources.

(3) FDA reviews the records and reports required in this section to facilitate a determination under section 512(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(e)) as to whether there may be grounds for suspending or withdrawing approval of the NADA or ANADA.

(4) The requirements of this section also apply to any approved Type A medicated article. In addition, the requirements contained in § 514.80(b)(1), (b)(2), (b)(4)(iv), and (b)(4)(v) apply to any approved Type A medicated article incorporated in animal feeds.

(5) The records and reports referred to in this section are in addition to those required by the current good manufacturing practice regulations in parts 211, 225, and 226 of this chapter.

(b) *Reporting requirements*—(1) *Three-day NADA/ANADA field alert report*. This report provides information pertaining to product and manufacturing defects that may result in serious adverse drug events. The applicant (or nonapplicant through the applicant) must submit the report to the appropriate FDA District Office or local FDA resident post within 3 working days of first becoming aware that a defect may exist. The information initially may be provided by telephone or other telecommunication means, with prompt written followup using Form FDA 1932 ''Veterinary Adverse Drug Reaction, Lack of Effectiveness, Product Defect Report.'' The mailing cover for these reports must be plainly marked ''3-Day NADA/ANADA Field Alert Report.''

(2) *Fifteen-day NADA/ANADA alert report*—(i) *Initial report*. This report provides information on each serious, unexpected adverse drug event, regardless of the source of the information. The applicant (or nonapplicant through the applicant) must submit the report to FDA within 15 working days of first receiving the information. The report must be submitted on Form FDA 1932, and its mailing cover must be plainly marked ''15-Day NADA/ANADA Alert Report.''

(ii) *Followup report*. The applicant must promptly investigate all adverse drug events that are the subject of 15-day NADA/ANADA alert reports. If this investigation reveals significant new information, a followup report must be submitted within 15 working days of receiving such information. A followup report must be submitted on Form FDA 1932, and its mailing cover must be plainly marked ''15-Day NADA/ANADA Alert Report Followup.'' The followup report must state the date of the initial report and provide the additional information. If additional information is sought but not obtained within 3 months of the initial report, a followup report is required describing the steps taken and why additional information was not obtained.

(3) *Nonapplicant report*. Nonapplicants must forward reports of adverse drug experiences to the applicant within 3 working days of first receiving the information. The applicant must then submit the report(s) to FDA as required in this section. The nonapplicant must maintain records of all nonapplicant reports, including the date the nonapplicant received the information concerning adverse drug experiences, the name and address of the applicant, and a copy of the adverse drug experience report including the date such report was submitted to the applicant. If the nonapplicant elects to also report directly to FDA, the nonapplicant should submit the report on Form FDA 1932 within 15 working days of first receiving the information.

(4) *Periodic drug experience report*. This report must be accompanied by a completed Form FDA 2301 ''Transmittal of Periodic Reports and Promotional Materials for New Animal Drugs.'' It must be submitted every 6 months for

the first 2 years following approval of an NADA or ANADA and yearly thereafter. Reports required by this section must contain data and information for the full reporting period. The 6-month periodic drug experience reports must be submitted within 30 days following the end of the 6-month reporting period. The yearly periodic drug experience reports must be submitted within 60 days of the anniversary date of the approval of the NADA or ANADA. Any previously submitted information contained in the report must be identified as such. For yearly (annual) periodic drug experience reports, the applicant may petition FDA to change the date of submission or frequency of reporting, and after approval of such petition, file such reports on the new filing date or at the new reporting frequency. Also, FDA may require a report at different times or more frequently. The periodic drug experience report must contain the following:

(i) *Distribution data*. Information about the distribution of each new animal drug product, including information on any distributor-labeled product. This information must include the total number of distributed units of each size, strength, or potency (e.g., 100,000 bottles of 100 5-milligram tablets; 50,000 10-milliliter vials of 5-percent solution). This information must be presented in two categories: Quantities distributed domestically and quantities exported.

(ii) *Labeling*. Applicant and distributor current package labeling, including package inserts (if any). For large-size package labeling or large shipping cartons, a representative copy must be submitted (e.g., a photocopy of pertinent areas of large feed bags). A summary of any changes in labeling made since the last report (listed by date of implementation) must be included with the labeling or if there have been no changes, a statement of such fact must be included with the labeling.

(iii) Nonclinical laboratory studies and clinical data not previously reported.

(A) Copies of in vitro studies (e.g., mutagenicity) and other nonclinical laboratory studies conducted by or otherwise obtained by the applicant.

(B) Copies of published clinical trials of the new animal drug (or abstracts of them) including clinical trials on safety and effectiveness, clinical trials on new uses, and reports of clinical experience pertinent to safety conducted by or otherwise obtained by the applicant. Review articles, papers, and abstracts in which the drug is used as a research tool, promotional articles, press clippings, and papers that do not contain tabulations or summaries of original data are not required to be reported.

(C) Descriptions of completed clinical trials conducted by or for the applicant must be submitted no later than 1 year after completion of research. Supporting information is not to be reported.

(iv) *Adverse drug experiences*. (A) Product/manufacturing defects and adverse drug experiences not previously reported under § 514.80(b)(1) and (b)(2) must be reported individually on Form FDA 1932.

(B) Reports of adverse drug experiences in the literature must be noted in the periodic drug experience report. A bibliography of pertinent references must be included with the report. Upon FDA's request, the applicant must provide a full text copy of these publications.

(C) Reports of previously not reported adverse drug experiences that occur in postapproval studies must be reported separately from other experiences in the periodic drug experience report and clearly marked or highlighted.

(v) *Summary report of increased frequency of adverse drug experience*. The applicant must periodically review the incidence of reports of adverse drug experiences to determine if there has been an increased frequency of serious (expected and unexpected) adverse drug events. The applicant must evaluate the increased frequency of serious (expected or unexpected) adverse drug events at least as often as reporting of periodic drug experience reports. The applicant must report the increased frequency of serious (expected and unexpected) adverse drug events in the periodic drug experience report. Summaries of reports of increased frequency of adverse drug events must be submitted in narrative form. The summaries must state the time period on which the increased frequency is based, time period comparisons in determining increased frequency, references to any previously submitted Form FDA 1932, the method of analysis, and the interpretation of the results. The summaries must be submitted in a separate section within the periodic drug experience report.

(5) *Other reporting*—(i) *Special drug experience report*. Upon written request, FDA may require that the applicant submit a report required under § 514.80 at different times or more frequently than the timeframes stated in § 514.80.

(ii) *Advertisements and promotional labeling*. The applicant must submit at the time of initial dissemination one set of specimens of mailing pieces and other labeling for prescription and over-the-counter new animal drugs. For prescription new animal drugs, the applicant must also submit one set of specimens of any advertisement at the time of initial publication or broadcast. Mailing pieces and labeling designed to contain product samples must be complete except that product samples may be omitted. Each submission of promotional labeling or advertisements must be accompanied by a completed Form FDA 2301.

(iii) *Distributor's statement*. At the time of initial distribution of a new animal drug product by a distributor, the applicant must submit a special drug experience report accompanied by a completed Form FDA 2301 containing the following:

(A) The distributor's current product labeling.

(*1*) The distributor's labeling must be identical to that in the approved NADA/ANADA except for a different and suitable proprietary name (if used) and the name and address of the distributor. The name and address of the distributor must be preceded by an appropriate qualifying phrase as permitted by the regulations such as ''manufactured for'' or ''distributed by.''

(*2*) Other labeling changes must be the subject of a supplemental NADA or ANADA as described under § 514.8.

(B) A signed statement by the distributor stating:

(*1*) The category of the distributor's operations (e.g., wholesale or retail),

(*2*) That the distributor will distribute the new animal drug only under the approved labeling,

(*3*) That the distributor will promote the product only for use under the conditions stated in the approved labeling,

(*4*) That the distributor will adhere to the records and reports requirements of this section, and

(*5*) That the distributor is regularly and lawfully engaged in the distribution or dispensing of prescription products if the product is a prescription new animal drug.

(c) *Multiple applications*. Whenever an applicant is required to submit a periodic drug experience report under the provisions of § 514.80(b)(4) with respect to more than one approved NADA or ANADA for preparations containing the same new animal drug so that the same information is required to be reported for more than one application, the applicant may elect to submit as a part of the report for one such application (the primary application) all the information common to such applications in lieu of reporting separately and repetitively on each. If the applicant elects to do this, the applicant must do the following:

(1) State when a report applies to multiple applications and identify all related applications for which the report is submitted by NADA or ANADA number.

(2) Ensure that the primary application contains a list of the NADA or ANADA numbers of all related applications.

(3) Submit a completed Form FDA 2301 to the primary application and each related application with reference to the primary application by NADA/ANADA number and submission date for the complete report of the common information.

(4) All other information specific to a particular NADA/ANADA must be included in the report for that particular NADA/ANADA.

(d) *Reporting forms.* Applicant must report adverse drug experiences and product/manufacturing defects on Form FDA 1932, ''Veterinary Adverse Drug Reaction, Lack of Effectiveness, Product Defect Report.'' Periodic drug experience reports and special drug experience reports must be accompanied by a completed Form FDA 2301 ''Transmittal of Periodic Reports and Promotional Material for New Animal Drugs,'' in accordance with directions provided on the forms. Computer-generated equivalents of Form FDA 1932 or Form FDA 2301, approved by FDA before use, may be used. Form FDA 1932 and Form FDA 2301 may be obtained on the Internet at http://www.fda.gov/cvm/forms/forms.html, by telephoning the Division of Surveillance (HFV–210), or by submitting a written request to the following address: Food and Drug Administration, Center for Veterinary Medicine, Division of Surveillance (HFV–210), 7500 Standish Pl., Rockville, MD 20855–2764.

(e) *Records to be maintained.* The applicants and nonapplicants must maintain records and reports of all information required by this section for a period of 5 years after the date of submission.

(f) *Access to records and reports.* The applicant and nonapplicant must, upon request from any authorized FDA officer or employee, at all reasonable times, permit such officer or employee to have access to copy and to verify all such required records and reports.

(g) *Mailing addresses.* Completed 15-day alert reports, periodic drug experience reports, and special drug experience reports must be submitted to the following address: Food and Drug Administration, Center for Veterinary Medicine, Document Control Unit (HFV–199), 7500 Standish Pl., Rockville, MD 20855–2764. Three-day alert reports must be submitted to the appropriate FDA district office or local FDA resident post. Addresses for district offices and resident posts may be obtained from the Internet at http://www.fda.gov (click on ''Contact FDA,'' then ''FDA Field Offices'').

(h) *Withdrawal of approval.* If FDA finds that the applicant has failed to establish the required records, or has failed to maintain those records, or failed to make the required reports, or has refused access to an authorized FDA officer or employee to copy or to verify such records or reports, FDA may withdraw approval of the application to which such records or reports relate. If FDA determines that withdrawal of the approval is necessary, the agency shall give the applicant notice and opportunity for hearing, as provided in § 514.200, on the question of whether to withdraw approval of the application.

(i) *Disclaimer.* Any report or information submitted under this section and any release of that report or information by FDA will be without prejudice and does not necessarily reflect a conclusion that the report or information constitutes an admission that the drug caused or contributed to an adverse event. A person need not admit, and may deny, that the report or information constitutes an admission that a drug caused or contributed to an adverse event.

Dated: March 21, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–7475 Filed 3–28–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

New Animal Drugs; Change of Sponsor's Name

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor's name from Bayer Corp., Agriculture Division, Animal Health to Bayer HealthCare LLC, Animal Health Division.

DATES: This rule is effective March 31, 2003.

FOR FURTHER INFORMATION CONTACT: David R. Newkirk, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6967, e-mail: dnewkirk@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Bayer Corp., Agriculture Division, Animal Health, P.O. Box 390, Shawnee Mission, KS 66201, has informed FDA of a change of name to Bayer HealthCare LLC, Animal Health Division. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c) to reflect the change.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A), because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

■ 2. Section 510.600 is amended in the table in paragraph (c)(1) by removing the entry for ''Bayer Corp.'' and by alphabetically adding an entry for ''Bayer HealthCare LLC''; and in the table in paragraph (c)(2) by revising the entry for ''000859'' to read as follows.

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * *	* *
Bayer HealthCare LLC, Animal Health Division, P.O. Box 390, Shawnee Mission, KS 66201.	000859
* * *	* *

(2) * * *

Drug labeler code	Firm name and address
* *	* * *

Drug labeler code	Firm name and address
000859	Bayer HealthCare LLC, Animal Health Division, P.O. Box 390, Shawnee Mission, KS 66201
* * * * *	

Dated: March 21, 2003.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 03–7533 Filed 3–28–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs; Gentamicin Sulfate, Mometasone Furoate, Clotrimazole Otic Suspension

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Schering-Plough Animal Health Corp. The supplemental NADA provides for the addition of once-daily administration to the dosage regimens for gentamicin/mometasone/clotrimazole otic suspension used to treat otitis externa in dogs and for revision of the indications to reflect a current format.

DATES: This rule is effective March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7540, e-mail: mberson@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Schering-Plough Animal Health Corp., 1095 Morris Ave., P.O. Box 3182, Union, NJ 07083, filed a supplement to NADA 141–177 that provides for once-daily administration of MOMETAMAX (gentamicin sulfate/mometasone furoate monohydrate/clotrimazole) Otic Suspension for the treatment of otitis externa in dogs caused by susceptible strains of yeast (*Malassezia pachydermatis*) and bacteria (*Pseudomonas* spp. [including *P. aeruginosa*], coagulase-positive staphylococci, *Enterococcus faecalis*, *Proteus mirabilis*, and beta-hemolytic streptococci). The indications for use are also being revised to reflect a current format. The supplemental NADA is approved as of January 9, 2003, and the regulations are amended in 21 CFR 524.1044h to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(c)(2)(F)(iii)), this supplemental approval qualifies for 3 years of marketing exclusivity beginning January 9, 2003.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 524

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Section 524.1044h is amended in paragraph (a) by removing ''3-'' and ''1-'', and by adding in their respective places ''3'' and ''1''; in paragraph (c)(1) by adding ''once or'' before ''twice''; and by revising paragraph (c)(2) to read as follows:

§ 524.1044h Gentamicin sulfate, mometasone furoate, clotrimazole otic suspension.

* * * * *

(c) * * *

(2) *Indications for use.* For the treatment of otitis externa caused by susceptible strains of yeast (*Malassezia pachydermatis*) and bacteria (*Pseudomonas* spp. [including *P. aeruginosa*], coagulase-positive staphylococci, *Enterococcus faecalis, Proteus mirabilis*, and beta-hemolytic streptococci).

* * * * *

Dated: March 21, 2003.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 03–7534 Filed 3–28–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Lasalocid and Bacitracin Methylene Disalicylate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Alpharma, Inc. The supplemental NADA provides for a 0-day withdrawal period for the use of approved two-way combination drug Type C medicated feeds containing lasalocid and bacitracin methylene disalicylate in broiler and fryer chickens.

DATES: This rule is effective March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Charles J. Andres, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–1600, e-mail: candres@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Alpharma, Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, filed a supplement to NADA 107–996 for use of AVATEC (lasalocid sodium) and BMD (bacitracin methylene disalicylate) Type A medicated articles to formulate two-way combination drug Type C medicated chicken feeds. The supplemental NADA provides for a 0-day withdrawal period

for broiler and fryer chicken feeds containing 68 grams/ton (g/ton) lasalocid and 10 to 50 g/ton bacitracin methylene disalicylate used for the prevention of coccidiosis, and for increased rate of weight gain and improved feed efficiency; and for broiler chicken feeds containing 68 to 113 g/ton lasalocid and 4 to 50 g/ton bacitracin methylene disalicylate used for the prevention of coccidiosis, and for improved feed efficiency. The NADA is approved as of December 4, 2002, and the regulations are amended in 21 CFR 558.311 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this supplemental application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.311 [Amended]

■ 2. Section 558.311 *Lasalocid* is amended in the table in paragraph (e)(1)(iv) under the ''Limitations'' column by removing ''withdraw 3 days before slaughter'', and in the table in paragraph (e)(1)(x) under the ''Limitations'' column by removing ''withdraw 3 days before slaughter;''.

Dated: March 21, 2003.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 03–7535 Filed 3–31–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Monensin; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the approved caution statements that must appear on animal feeds containing monensin. This action is being taken to improve the accuracy of the regulations.

DATES: This rule is effective March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–2), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0159, e-mail: msharar@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: FDA has found that the animal drug regulations do not reflect the approved caution statements that must appear on animal feeds containing monensin. The regulation in 21 CFR 558.355 is being amended to correct inaccurate references to mature turkeys and guinea fowl that were incorporated into the regulations in the **Federal Register** published on July 26, 2000 (65 FR 45879). This action is being taken to improve the accuracy of the regulations.

Publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). Notice and public procedure are unnecessary because FDA is merely correcting nonsubstantive errors.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.355 [Amended]

2. Section 558.355 *Monensin* is amended in paragraph (d)(6), in the first sentence, by removing the phrase '', other equines, mature turkeys, or guinea fowl'' and by adding in its place the phrase ''or other equines'' and in the second sentence by removing ''and guinea fowl''.

Dated: March 25, 2003.

Clifford Johnson,

Director, Office of Surveillance and Compliance, Center for Veterinary Medicine.

[FR Doc. 03–7598 Filed 3–28–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Decoquinate; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a rule that appeared in the **Federal Register** of December 5, 2002 (67 FR 72370). The rule amended the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA). FDA is correcting the range of approved concentrations of decoquinate Type A medicated article that may be used to make certain combination drug Type C medicated feeds for cattle. This correction is being made so the decoquinate regulations accurately reflect previously approved concentrations. This document corrects those errors.

DATES: This rule is effective March 31, 2003.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7519 Standish Pl.,

Rockville, MD 20855, 301–827–4567, e-mail: ghaibel@ cvm.fda.gov

SUPPLEMENTARY INFORMATION: In FR Doc. 02–30863, appearing on page 72370 in the **Federal Register** of December 5, 2002, the following correction is made:

§ 558.195 [Amended]

1. On page 72372, in § 588.195, in the table in paragraph (e)(2), under the ''Decoquinate in grams/ton'' column, in the entries for (iii), (iv), and (v), ''13.6'' is amended to read ''13.6 to 27.2''.

Dated: March 25, 2003.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 03–7599 Filed 3–28–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720–AA74

TRICARE; Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Appeals and Hearings Procedures, Formal Review

AGENCY: Department of Defense.

ACTION: Final rule; amendment.

SUMMARY: On March 13, 2003 (68 FR 11973), the Department of Defense published an administrative correction to the final rule on Appeals and Hearings Procedures. The effective date of the amendment was not published in that correction. This rule is published to identify the effective date. All other information remains unchanged.

DATES: The effective date of the correction is May 1, 1983.

FOR FURTHER INFORMATION CONTACT: G. Jones, 3030–676–3401.

Dated: March 25, 2003.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–7603 Filed 3–28–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–02–018]

RIN 1625–AA00 [Formerly 2115–AA97]

Security Zone: Protection of Tank Ships, Puget Sound, WA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: In order to promptly respond to an increase in the Coast Guard's maritime security posture, the Coast Guard is establishing regulations for the security of tank ships in the navigable waters of Puget Sound and adjacent waters, Washington. This security zone, when enforced by the Captain of the Port Puget Sound, will provide for the regulation of vessel traffic in the vicinity of tank ships in the navigable waters of the United States, Puget Sound and adjacent waters, WA.

DATES: This section is effective April 15, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD13–02–018 and are available for inspection or copying at Commanding Officer, Marine Safety Office Puget Sound, 1519 Alaskan Way South, Seattle, Washington 98134 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG R. S. Teague, c/o Captain of the Port Puget Sound, (206) 217–6232.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On December 27, 2002, we published a notice of proposed rulemaking (NPRM) entitled Security Zone: Protection of Tank Ships, Puget Sound, WA in the **Federal Register** (67 FR 79017). We received one letter commenting on the proposed rule. No public hearing was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard promulgated a temporary final rule (67 FR 66335) establishing security zones around tank ships in Puget Sound that expires on April 15, 2003. This final rule does not substantively differ from the temporary final rule. Both the TFR and this rule were established to increase the Coast Guard's maritime security posture by providing for the security of tank ships in the navigable waters of Puget Sound. The Captain of the Port Puget Sound deems it necessary that the security zone around tank ships continue to be in effect. Rather than extend the TFR or issue a new TFR the Coast Guard is making this final rule effective upon publication in the **Federal Register**. A notice of enforcement will be simultaneously published in the **Federal Register** with this rule.

Background and Purpose

Recent events highlight the fact that there are hostile entities operating with the intent to harm U.S. National Security. The President has continued the national emergencies he declared following the September 11, 2001 terrorist attacks (67 FR 58317 (Sept. 13, 2002) (continuing national emergency with respect to terrorist attacks)), (67 FR 59447 (Sept. 20, 2002) (continuing national emergency with respect to persons who commit, threaten to commit or support terrorism)). The President also has found pursuant to law, including the Act of June 15, 1917, as amended August 9, 1950, by the Magnuson Act (50 U.S.C. 191 *et seq.*), that the security of the United States is and continues to be endangered following the attacks (E.O. 13,273, 67 FR 56215 (Sept. 3, 2002) (security endangered by disturbances in international relations of U.S. and such disturbances continue to endanger such relations)).

On October 15, 2002, the Captain of the Port Puget Sound issued a TFR (67 FR 66335, CGD13–02–015, 33 CFR 165.T13–011) establishing security zones for tank ship protection, which expires on April 15, 2003. The Coast Guard, through this action, will assist tank ships by establishing a permanent security zone, which when enforced by the Captain of the Port would exclude persons and vessels from the immediate vicinity of all tank ships. Entry into this zone will be prohibited unless authorized by the Captain of the Port or his designee. The Captain of the Port may be assisted by other federal, state, or local agencies.

Discussion of Comments and Changes

In our NPRM, we stated that the Captain of the Port from time to time would publish or provide notice of ''activation'' of the proposed security zone. In this final rule, we have replaced the word ''activation'' with the word ''enforcement'' to clarify what we mean. Security zones are established by rulemaking procedures, which necessarily includes notice and

comment and other required procedures. Notice to the public that a given security zone has been established through those required procedures is normally done by the methods set out in 33 CFR 165.7, and may include broadcasts and publication in the **Federal Register**. However, a security zone cannot be legally established only by mere notice to the public, using the methods described in 33 CFR 165.7. Because the word ''activation'' may connote ''establishment'' to some members of the public, for purposes of clarity, we have changed it to read ''enforcement.'' The result of this change will be that the rule will operate to legally establish a security zone around all tank vessels in the Puget Sound area, and the Captain of the Port will keep the public informed via the methods described in the rule as to when the Coast Guard will enforce the security zone and when it will not. The rule provides blanket authorization for all persons and vessels to enter, transit, and depart the security zone during periods when the Coast Guard has suspended enforcement thereof. Decisions to enforce or suspend enforcement of the security zone remain within the discretion of the Captain of the Port.

We received one letter with two comments. The first comment concerned the methods of notifying the public when the security zone was activated. The commenter suggested the notification be located on the 13th Coast Guard District Web page and possibly obtaining an 800 number. In addition to notifying the public through the **Federal Register**, Broadcast Notice to Mariners, Local Notice Mariners, and press releases, the COTP will also publish the enforcement notice via Marine Safety Office Puget Sound's internet web page located at *http://www.uscg.mil/d13/units/msopuget/*. In addition, Marine Safety Office Puget Sound maintains a telephone line that is manned 24 hours a day, 7 days a week. The public can contact Marine Safety Office Puget Sound at (206) 217–6200 or (800) 688–6664 to obtain information concerning enforcement of this rule. Given the various other methods the Coast Guard intends to utilize to notify the public regarding the enforcement of this rule and the manned telephone lines, the Coast Guard finds that an additional 800 number would be costly and would not significantly improve public notification. Accordingly, the Coast Guard does not intend to purchase a separate 800 number.

The second comment addressed the VHF–FM channels that the tank ship would be monitoring. The commenter suggested that to avoid unanswered calls, anyone needing to enter the 100-yard exclusion zone should contact the on-scene official patrol or tank ship master on channel 13 only. If an on-scene official patrol is enforcing the zone, vessels should contact the on-scene official patrol on channel 16. In the absence of an official patrol, the vessel should contact the tank ship master on channel 13.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this rule would restrict access to a 500-yard area surrounding tank ships, the effect of this rule will not be significant because: (i) Individual tank ship security zones are limited in size; (ii) the on-scene official patrol or tank ship master may authorize access to the tank ship security zone; (iii) the tank ship security zone for any given transiting tank ship will effect a given geographical location for a limited time; and (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to operate near or anchor in the vicinity of tank ships in the navigable waters of the United States.

This rule would not have a significant economic impact on a substantial number of small entities for the following reasons: (i) Individual tank ship security zones are limited in size; (ii) The on-scene official patrol or tank ship master may authorize access to the tank ship security zone; (iii) the tank ship security zone for any given transiting tank ship will affect a given geographic location for a limited time; and (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this rule so that they could better evaluate its effects on them and participate in the rulemaking.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this final rule will not result in such an expenditure, we do discuss the

effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

The Coast Guard recognizes the rights of Native American Tribes under the Stevens Treaties. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies to mitigate tribal concerns. Given the flexibility of this rule to accommodate the special needs of mariners in the vicinity of tank ships, and the Coast Guard's commitment to working with the Tribes, we have determined that tank ship security and fishing rights protection need not be incompatible and therefore have determined that this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and conclude that under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. Add § 165.1313 to read as follows:

§ 165.1313 Security Zone Regulations, Tank Ship Protection, Puget Sound and adjacent waters, Washington

(a) Notice of enforcement or suspension of enforcement. The tank ship security zone established by this section will be enforced only upon notice by the Captain of the Port Puget Sound. Captain of the Port Puget Sound will cause notice of the enforcement of the tank ship security zone to be made by all appropriate means to effect the widest publicity among the affected segments of the public including publication in the **Federal Register** as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include but are not limited to, Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port Puget Sound will issue a Broadcast Notice to Mariners and Local Notice to Mariners notifying the public when enforcement of the tank ship security zone is suspended.

(b) The following definitions apply to this section:

(1) *Federal Law Enforcement Officer* means any employee or agent of the United States government who has the authority to carry firearms and make warrantless arrests and whose duties involve the enforcement of criminal laws of the United States.

(2) *Navigable waters of the United States* means those waters defined as such in 33 CFR part 2.

(3) *Navigation Rules* means the Navigation Rules, International-Inland.

(4) *Official patrol* means those persons designated by the Captain of the Port to monitor a tank ship security zone, permit entry into the zone, give legally enforceable orders to persons or vessels with in the zone and take other actions authorized by the Captain of the Port. Persons authorized in paragraph (k) to enforce this section are designated as the official patrol.

(5) *Public vessel* means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

(6) *Tank ship security zone* is a regulated area of water, established by this section, surrounding tank ships for a 500-yard radius that is necessary to provide for the security of these vessels.

(7) *Tank ship* means a self-propelled tank vessel that is constructed or adapted primarily to carry oil or hazardous material in bulk as cargo or cargo residue in the cargo spaces. The definition of tank ship does not include tank barges.

(8) *Washington Law Enforcement Officer* means any General Authority Washington Peace Officer, Limited Authority Washington Peace Officer, or Specially Commissioned Washington Peace Officer as defined in Revised Code of Washington section 10.93.020.

(c) Security zone: There is established a tank ship security zone extending for a 500-yard radius around all tank ships located in the navigable waters of the United States in Puget Sound, WA, east of 123 degrees, 30 minutes West Longitude. [Datum: NAD 1983]

(d) Compliance: The tank ship security zone established by this section remains in effect around tank ships at all times, whether the tank ship is underway, anchored, or moored. Upon notice of enforcement by the Captain of the Port Puget Sound, the Coast Guard will enforce the tank ship security zone in accordance with rules set out in this section. Upon notice of suspension of enforcement by the Captain of the Port Puget Sound, all persons and vessels are authorized to enter, transit, and exit the tank ship security zone, consistent with the Navigation Rules.

(e) The Navigation Rules shall apply at all times within a tank ship security zone.

(f) When within a tank ship security zone all vessels shall operate at the minimum speed necessary to maintain a

safe course and shall proceed as directed by the on-scene official patrol or tank ship master. No vessel or person is allowed within 100 yards of a tank ship, unless authorized by the on-scene official patrol or tank ship master.

(g) To request authorization to operate within 100 yards of a tank ship, contact the on-scene official patrol or tank ship master on VHF–FM channel 16 or 13.

(h) When conditions permit, the on-scene official patrol or tank ship master should:

(1) Permit vessels constrained by their navigational draft or restricted in their ability to maneuver to pass within 100 yards of a tank ship in order to ensure a safe passage in accordance with the Navigation Rules;

(2) Permit commercial vessels anchored in a designated anchorage area to remain at anchor when within 100 yards of a passing tank ship; and

(3) Permit vessels that must transit via a navigable channel or waterway to pass within 100 yards of a moored or anchored tank ship with minimal delay consistent with security.

(i) Exemption. Public vessels as defined in paragraph (b) of this section are exempt from complying with paragraphs (c), (d), (f), (g), (h), (j), and (k) of this section.

(j) Exception. 33 CFR Part 161 promulgates Vessel Traffic Service regulations. Measures or directions issued by Vessel Traffic Service Puget Sound pursuant to 33 CFR Part 161 shall take precedence over the regulations in this section.

(k) Enforcement. Any Coast Guard commissioned, warrant or petty officer may enforce the rules in this section. In the navigable waters of the United States to which this section applies, when immediate action is required and representatives of the Coast Guard are not present or not present in sufficient force to provide effective enforcement of this section in the vicinity of a tank ship, any Federal Law Enforcement Officer or Washington Law Enforcement Officer may enforce the rules contained in this section pursuant to 33 CFR § 6.04–11. In addition, the Captain of the Port may be assisted by other federal, state or local agencies in enforcing this section.

Dated: March 20, 2003.

Danny Ellis,

Captain, Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 03–7548 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–03–003]

RIN 1625–AA00

Security and Safety Zone: Protection of Large Passenger Vessels, Puget Sound, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; request for comments.

SUMMARY: Increases in the Coast Guard's maritime security posture necessitate establishing temporary regulations for the safety and security of large passenger vessels in the navigable waters of Puget Sound and adjacent waters, Washington. This security and safety zone will provide for the regulation of vessel traffic in the vicinity of large passenger vessels in the navigable waters of the United States.

DATES: This temporary rule is effective February 8, 2003, until August 8, 2003. Comments and related material must reach the Coast Guard on or before April 30, 2003.

ADDRESSES: You may mail comments and related material to Marine Safety Office Puget Sound, 1519 Alaskan Way South, Seattle, Washington 98134. Marine Safety Office Puget Sound maintains the public docket [CGD13–03–003] for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office Puget Sound between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG R. S. Teague, c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, WA 98134, (206) 217–6232.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD13–03–003), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this temporary final rule in view of them.

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register.** Publishing a NPRM would be contrary to public interest since immediate action is necessary to safeguard large passenger vessels from sabotage, other subversive acts, or accidents. If normal notice and comment procedures were followed, this rule would not become effective soon enough to provide immediate protection to large passenger vessels from the threats posed by hostile entities and would compromise the vital national interest in protecting maritime transportation and commerce. The security and safety zone in this regulation has been carefully designed to minimally impact the public while providing a reasonable level of protection for large passenger vessels. For these reasons, following normal rulemaking procedures in this case would be impracticable, unnecessary, and contrary to the public interest.

Background and Purpose

Recent events highlight the fact that there are hostile entities operating with the intent to harm U.S. National Security. The President has continued the national emergencies he declared following the September 11, 2001 terrorist attacks (67 FR 58317 (Sept. 13, 2002) (continuing national emergency with respect to terrorist attacks)), 67 FR 59447 (Sept. 20, 2002) (continuing national emergency with respect to persons who commit, threaten to commit or support terrorism)). The President also has found pursuant to law, including the Act of June 15, 1917, as amended August 9, 1950, by the Magnuson Act (50 U.S.C. 191 *et. seq.*), that the security of the United States is and continues to be endangered following the attacks (E.O. 13,273, 67 FR 56215 (Sept. 3, 2002) (security endangered by disturbances in international relations of U.S. and such disturbances continue to endanger such relations)).

The Coast Guard, through this action, intends to assist large passenger vessels by establishing a security and safety zone to exclude persons and vessels from the immediate vicinity of all large passenger vessels. Entry into this zone will be prohibited unless authorized by the Captain of the Port or his designee. The Captain of the Port may be assisted by other federal, state, or local agencies.

Discussion of Rule

This rule, for safety and security concerns, controls vessel movement in a regulated area surrounding large passenger vessels. For the purpose of this regulation, a large passenger vessel means any vessel over 100 feet in length (33 meters) carrying passengers for hire including, but not limited to, cruise ships, auto ferries, passenger ferries, and excursion vessels. All vessels within 500 yards of large passenger vessels shall operate at the minimum speed necessary to maintain a safe course, and shall proceed as directed by the official patrol. No vessel, except a public vessel (defined below), is allowed within 100 yards of a large passenger vessel, unless authorized by the on-scene official patrol or large passenger vessel master. Vessels requesting to pass within 100 yards of a large passenger vessel shall contact the on-scene official patrol or large passenger vessel master on VHF–FM channel 16 or 13. The on-scene official patrol or large passenger vessel master may permit vessels that can only operate safely in a navigable channel to pass within 100 yards of a large passenger vessel in order to ensure a safe passage in accordance with the Navigation Rules. In addition, measures or directions issued by Vessel Traffic Service Puget Sound pursuant to 33 CFR part 161 shall take precedence over the regulations in this temporary final rule. Similarly, commercial vessels anchored in a designated anchorage area may be permitted to remain at anchor within 100 yards of passing large passenger vessels. Public vessels for the purpose of this Temporary Final Rule are vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this regulation restricts access to the regulated area, the effect of this regulation will not be significant because: (i) Individual large passenger vessel security and safety zones are limited in size; (ii) the on-scene official patrol or large passenger vessel master may authorize access to the large passenger vessel security and safety zone; (iii) the large passenger vessel security and safety zone for any given transiting large passenger vessel will effect a given geographical location for a limited time; and (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to operate near or anchor in the vicinity of large passenger vessels in the navigable waters of the United States to which this rule applies.

This temporary regulation will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) Individual large passenger vessel security and safety zones are limited in size; (ii) the on-scene official patrol or large passenger vessel master may authorize access to the large passenger vessel security and safety zone; (iii) the passenger vessel security and safety zone for any given transiting large passenger vessel will affect a given geographic location for a limited time; and (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact one of the points of contact listed under **FOR FURTHER INFORMATION CONTACT.**

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and

Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

The Coast Guard recognizes the rights of Native American Tribes under the Stevens Treaties. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies to mitigate tribal concerns. Given the flexibility of the Temporary Final Rule to accommodate the special needs of mariners in the vicinity of large passenger vessels and the Coast Guard's commitment to working with the Tribes, we have determined that passenger vessel security and fishing rights protection need not be incompatible and therefore have determined that this Temporary Final Rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Nevertheless, Indian Tribes that have questions concerning the provisions of this Temporary Final Rule or options for compliance are encouraged to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT.**

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard's preliminary review indicates this temporary rule is categorically excluded from further environmental documentation under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.lD. As an emergency action, the Environmental Analysis, requisite regulatory consultations, and Categorical Exclusion Determination will be prepared and submitted after establishment of this temporary passenger vessel security zone, and will be available in the docket. This temporary rule ensures the safety and security of large passenger vessels. All standard environmental measures remain in effect. The Categorical Exclusion Determination will be made available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. From February 8, 2003, until August 8, 2003, temporary § 165.T13–002 is added to read as follows:

§ 165.T13–002 Security and Safety Zone

Large Passenger Vessel Protection, Puget Sound and adjacent waters, Washington.

(a) The following definitions apply to this section:

(1) *Federal Law Enforcement Officer* means any employee or agent of the United States government who has the authority to carry firearms and make warrantless arrests and whose duties involve the enforcement of criminal laws of the United States.

(2) *Large passenger vessel* means any vessel over 100 feet in length (33 meters) carrying passengers for hire including, but not limited to, cruise ships, auto ferries, passenger ferries, and excursion vessels.

(3) *Large passenger vessel security and safety zone* is a regulated area of water, established by this section, surrounding large passenger vessels for a 500 yard radius, that is necessary to provide for the security and safety of these vessels.

(4) *Navigable waters of the United States* means those waters defined as such in 33 CFR part 2.

(5) *Navigation Rules* means the Navigation Rules, International-Inland.

(6) *Official patrol* means those persons designated by the Captain of the Port to monitor a large passenger vessel security and safety zone, permit entry into the zone, give legally enforceable orders to persons or vessels within the zone and take other actions authorized by the Captain of the Port. Persons authorized to enforce this section are designated as the official patrol.

(7) *Public vessel* means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

(8) *Washington Law Enforcement Officer* means any General Authority Washington Peace Officer, Limited Authority Washington Peace Officer, or Specially Commissioned Washington Peace Officer as defined in Revised Code of Washington section 10.93.020.

(b) Security and safety zone. There is established a large passenger vessel security and safety zone extending for a 500 yard radius around all large passenger vessels located in the navigable waters of the United States in Puget Sound, WA, east of 123 degrees, 30 minutes West Longitude. [Datum: NAD 1983]

(c) The large passenger vessel security and safety zone established by this section remains in effect at all times, whether the large passenger vessel is underway, anchored, or moored.

(d) The Navigation Rules shall apply at all times within a large passenger vessel security and safety zone.

(e) All vessels within a large passenger vessel security and safety zone shall operate at the minimum speed necessary to maintain a safe course and shall proceed as directed by the on-scene official patrol or large passenger vessel master. No vessel or person is allowed within 100 yards of a large passenger vessel, unless authorized by the on-scene official patrol or large passenger vessel master.

(f) To request authorization to operate within 100 yards of a large passenger vessel, contact the on-scene official patrol or large passenger vessel master on VHF–FM channel 16 or 13.

(g) When conditions permit, the on-scene official patrol or large passenger vessel master should:

(1) Permit vessels constrained by their navigational draft or restricted in their ability to maneuver to pass within 100 yards of a large passenger vessel in order to ensure a safe passage in accordance with the Navigation Rules; and

(2) Permit commercial vessels anchored in a designated anchorage area to remain at anchor within 100 yards of a passing large passenger vessel; and

(3) Permit vessels that must transit via a navigable channel or waterway to pass within 100 yards of a moored or anchored large passenger vessel with minimal delay consistent with security.

(h) When a large passenger vessel approaches within 100 yards of a vessel that is moored, or anchored in a designated anchorage, the stationary vessel must stay moored or anchored while it remains with in the large passenger vessel's safety and security zone unless it is either ordered by, or given permission by the Captain of the Port Puget Sound, his designated representative or the on-scene official patrol to do otherwise.

(i) Exemption. Public vessels as defined in paragraph (a) of this section are exempt from complying with paragraphs (e), (f), (g), (h), (j), (k), and (L) of this section.

(j) Exception. 33 CFR Part 161 promulgates Vessel Traffic Service regulations. Measures or directions issued by Vessel Traffic Service Puget Sound pursuant to 33 CFR Part 161 shall take precedence over the regulations in this section.

(k) Enforcement. Any Coast Guard commissioned, warrant or petty officer may enforce the rules in this section. When immediate action is required and representatives of the Coast Guard are not present or not present in sufficient force to exercise effective control in the vicinity of a large passenger vessel, any Federal Law Enforcement Officer or Washington Law Enforcement Officer may enforce the rules contained in this section pursuant to 33 CFR 6.04–11. In addition, the Captain of the Port may be assisted by other federal, state or local agencies in enforcing this section.

(l) Waiver. The Captain of the Port Puget Sound may waive any of the requirements of this section for any vessel or class of vessels upon finding that a vessel or class of vessels, operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purpose of port security, safety or environmental safety.

Dated: February 8, 2003.

Danny Ellis,

Captain, Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 03–7546 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–15–P

NATIONAL SCIENCE FOUNDATION

45 CFR Part 674

RIN 3145–AA40

Antarctic Meteorites

AGENCY: National Science Foundation (NSF).

ACTION: Final rule.

SUMMARY: NSF is issuing a final rule that authorizes the collection of meteorites in Antarctica for scientific research purposes only. In addition, the regulations provide requirements for appropriate collection, handling, and curation of Antarctic meteorites to preserve their scientific value. These regulations implement Article 7 of the Protocol on Environmental Protection to the Antarctic Treaty and are issued pursuant to Section 6 of the Antarctic Conservation Act, as amended by the Antarctic Science, Tourism and Conservation Act of 1996.

DATES: The rule is effective April 30, 2003.

FOR FURTHER INFORMATION CONTACT: Anita Eisenstadt, Office of the General Counsel, at 703–292–8060.

SUPPLEMENTARY INFORMATION: On August 27, 2002, the NSF published a proposed rule authorizing the collection of meteorites in Antarctica for scientific research purposes only. NSF invited public comments on the proposed rule. NSF received nine comments on the proposed rule. All of the commenters were supportive of the proposed rule.

One of the commenters suggested that NSF revise § 674.5(3)(ii) to recognize that in some cases, a meteorite will not belong to any well-established classification. NSF agrees with this comment and has revised the language accordingly.

Another commenter requested clarification whether or not meteorites are considered mineral resources. As noted in the preamble to the proposed rule, the authority for this rule derives from Article 7 of the Protocol on Environmental Protection to the Antarctic Treaty which states that ''any activity relating to mineral resources, other than scientific research, shall be prohibited.'' These regulations implement this provision of the Protocol with respect to meteorites.

The same commenter raised concerns that the definition of expedition would enable U.S. citizens to avoid application of the rule by organizing expeditions to Antarctica in a foreign country. NSF notes that the restriction in § 674.4 against collecting meteorites in Antarctic for other than scientific research purposes applies to any person subject to the jurisdiction of the U.S. This provision would extend to U.S. citizens collecting meteorites in Antarctica, regardless of the location from which the expedition is organized. Consistent with other regulations implementing U.S. obligations under the Antarctic Treaty, the more detailed requirements for preparation and plans and submissions of information to NSF are limited to expeditions for which the United States is required to provide advance notification under the Antarctic Treaty. NSF believes that this obligation is appropriately apportioned.

Another commenter expressed concern that the exception for serendipitous finds could result in meteorites ''fall[ing] through the regulatory cracks before arriving at a curation site.'' Section 674.7 provides that serendipitous finds must be handled in a manner that minimizes contamination and must otherwise be documented in accordance with the requirements of § 674.5. This approach recognizes that serendipitous finds will occur and assures that the opportunity to collect these specimens for scientific purposes is not lost. NSF believes that the requirement for documenting and curating serendipitous finds provides an appropriate mechanism for adequately and accurately tracking Antarctic meteorites.

Another commenter suggested technical revisions to the handling requirements in Section 674.5 (b)(1) to reflect current research laboratory practices. These revisions have been adopted in the final regulation. All other comments were appropriately considered in the promulgation of this final rule.

Determinations

NSF has determined, under the criteria set forth in Executive Order 12866, that this rule is not a significant regulatory action requiring review by the Office of Information and Regulatory Affairs. The rule is not a major rule under the Congressional Review Act. The Unfunded Mandate Reform Act of 1995 (Pub. L. 104–4), in sections 202 and 205, requires that agencies prepare analytic statements before proposing any rule that may result in annual expenditures of $100 million by State, local, Indian Tribal governments, or the

private sector. Since this rule will not result in expenditures of this magnitude, it is hereby certified that such statements are not necessary. As required by the Regulatory Flexibility Act, it is hereby certified this rule will not have significant impact on a substantial number of small businesses.

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations, 5 CFR part 1320, do not apply to the rule because there are less than ten U.S. entities which annually organize expeditions to Antarctica for the purpose of collecting meteorites. Finally, NSF has reviewed this rule in light of section 2 of Executive Order 12778 and I certify for the National Science Foundation that this rule meets the applicable standards provided in sections 2(a) and 2(b) of that order.

List of Subjects in 45 CFR Part 674

Antarctica, Meteorites, Research.

Dated: March 24, 2003.

Amy Northcutt,

Deputy General Counsel, National Science Foundation.

For the reasons set forth in the preamble, the National Science Foundation is adding 45 CFR part 674 to read as follows:

PART 674—ANTARCTIC METEORITES

Sec.
674.1 Purpose of regulations.
674.2 Scope and applicability.
674.3 Definitions.
674.4 Restrictions on collection of meteorites in Antarctica.
674.5 Requirements for collection, handling, documentation and curation of Antarctic meteorites.
674.6 Submission of information to NSF.
674.7 Exception for serendipitous finds.

Authority: 16 U.S.C. 2401 *et seq.*

§ 674.1 Purpose of regulations.

The purpose of the regulations in this part is to implement the Antarctic Conservation Act of 1978, as amended by the Antarctic Science, Tourism and Conservation Act of 1996, (16 U.S.C 2401 *et seq.*), and Article 7 of the Protocol on Environmental Protection to the Antarctic Treaty done at Madrid on October 4, 1991. Specifically, this part is designed to ensure meteorites in Antarctica will be collected for scientific research purposes only and that U.S. expedition organizers to Antarctica who plan to collect meteorites in Antarctica will ensure that any specimens collected will be properly collected, handled, documented and curated to preserve their scientific value.

§ 674.2 Scope and applicability.

This part applies to any person who collects meteorites in Antarctica. The requirements of § 674.5 apply to any person organizing an expedition to or within Antarctica for which the United States is required to give advance notice under Paragraph (5) of Article VII of the Antarctic Treaty where one of the purposes of the expedition is to collect meteorites in Antarctica. The requirements in this part only apply to the collection of meteorites in Antarctica after April 30, 2003.

§ 674.3 Definitions.

In this part:

Antarctica means the area south of 60 degrees south latitude.

Expedition means an activity undertaken by one or more persons organized within or proceeding from the United States to or within Antarctica for which advance notification is required under Paragraph 5 of Article VII of the Antarctic Treaty.

Incremental cost is the extra cost involved in sharing the samples with other researchers. It does not include the initial cost of collecting the meteorites in Antarctica or the cost of maintaining the samples in a curatorial facility.

Person has the meaning given that term in section 1 of title 1, United States Code, and includes any person subject to the jurisdiction of the United States.

§ 674.4 Restrictions on collection of meteorites in Antarctica.

No person may collect meteorites in Antarctica for other than scientific research purposes.

§ 674.5 Requirements for collection, handling, documentation, and curation of Antarctic meteorites.

(a) Any person organizing an expedition to or within Antarctica, where one of the purposes of the expedition is to collect meteorites in Antarctica, shall ensure that the meteorites will be properly collected, documented, handled, and curated to preserve their scientific value. Curation includes making specimens available to bona fide scientific researchers on a timely basis, in accordance with specified procedures.

(b) Expedition organizers described in paragraph (a) of this section shall develop and implement written procedures for the collection, documentation, and curation of specimens which include the following components:

(1) *Handling requirements.* Handling procedures shall ensure that the specimens are properly labeled and handled to minimize the potential for contamination from the point of collection to the point of curation. At a minimum, handling procedures shall include:

(i) Handling the samples with clean Teflon or polyethylene coated implements or stainless steel implements (or equivalent);

(ii) Double bagging of samples in Teflon or polyethylene (or equivalent) bags;

(iii) A unique sample identifier included with the sample;

(iv) Keeping the samples frozen at or below −15 °C until opened and thawed in a clean laboratory setting at the curation facility; and

(v) Thawing in a clean, dry, non-reactive gas environment, such as nitrogen or argon.

(2) *Sample documentation.* Documentation for each specimen, that includes, at a minimum:

(i) A unique identifier for the sample;

(ii) The date of find;

(iii) The date of collection (if different from date of find);

(iv) The latitude and longitude to within 500 meters of the location of the find and the name of the nearest named geographical feature;

(v) The name, organizational affiliation, and address of the finder or the expedition organizer;

(vi) A physical description of the specimen and of the location of the find; and

(vii) Any observations of the collection activity, such as potential contamination of the specimen.

(3) *Curation.* Make prior arrangements to ensure that any specimens collected in Antarctica will be maintained in a curatorial facility that will:

(i) Preserve the specimens in a manner that precludes chemical or physical degradation;

(ii) Produce an authoritative classification for meteorites that can be shown to belong to a well-established chemical and petrological group, and provide appropriate descriptions for those meteorites that cannot be shown to belong to an established chemical and petrological group;

(iii) Develop and maintain curatorial records associated with the meteorites including collection information, authoritative classification, total known mass, information about handling and sample preparation activities that have been performed on the meteorite, and sub-sample information;

(iv) Submit an appropriate summary of information about the meteorites to the Antarctic Master Directory via the National Antarctic Data Coordination Center as soon as possible, but no later

than two years after receipt of samples at the curatorial facility;

(v) Submit information on classification of the meteorite to an internationally recognized meteorite research catalog, such as the ''Catalogue of Meteorites'' published by the Natural History Museum of London or the ''Meteoritical Bulletin'' published by the Meteoritical Society;

(vi) Specify procedures by which requests for samples by bonafide scientific researchers will be handled;

(vii) Make samples available to bonafide scientific researchers at no more than incremental cost and within a reasonable period of time; and

(viii) In the event that the initial curatorial facility is no longer in a position to provide curation services for the specimens, or believes that the meteorites no longer merit curation, it shall consult with the National Science Foundation's Office of Polar Programs to identify another appropriate curatorial facility, or to determine another appropriate arrangement.

§ 674.6 Submission of information to NSF.

A copy of the written procedures developed by expedition organizers pursuant to § 674.5(b) shall be furnished to the National Science Foundation's Office of Polar Programs at a minimum of 90 days prior to the planned departure date of the expedition for Antarctica. NSF shall publish a notice of availability of the plan in the **Federal Register** that provides for a 15 day comment period. NSF shall evaluate the procedures in the plan to determine if they are sufficient to ensure that the meteorites will be properly collected, handled, documented, and curated. NSF shall provide comments on the adequacy of the plan within 45 days of receipt. If NSF advises the expedition organizer that the procedures satisfy the requirements of § 674.5 and the procedures are implemented, the expedition organizer will have satisfied the requirements of this part.

§ 674.7 Exception for serendipitous finds.

A person who makes a serendipitous discovery of a meteorite in Antarctica which could not have been reasonably anticipated, may collect the meteorite for scientific research purposes, provided that the meteorite is collected in the manner most likely to prevent contamination under the circumstances, and provided that the meteorite is otherwise handled, documented and curated in accordance with the requirements of § 674.5.

[FR Doc. 03–7607 Filed 3–28–03; 8:45 am]

BILLING CODE 7555–01–P

DEPARTMENT OF DEFENSE

48 CFR Parts 202, 204, 207, 239, 250, and 252 and Appendix G to Chapter 2

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement to update activity names and addresses, references, and administrative information.

EFFECTIVE DATE: March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0311; facsimile (703) 602–0350.

List of Subjects in 48 CFR Parts 202, 204, 207, 239, 250, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR parts 202, 204, 207, 239, 250, and 252 and Appendix G to chapter 2 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 202, 204, 207, 239, 250, and 252 and Appendix G to subchapter I continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 202—DEFINITIONS OF WORDS AND TERMS

202.101 [Amended]

■ 2. Section 202.101 is amended in the definition of ''Contracting activity'', under the heading ''AIR FORCE'', by adding, after the entry ''Air Force Materiel Command'', the entry ''Air Force Reserve Command''.

PART 204—ADMINISTRATIVE MATTERS

■ 3. Section 204.7202–1 is amended by revising paragraph (b)(2)(i)(D) to read as follows:

204.7202–1 CAGE codes.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(D) The Internet to access the CAGE Lookup Server at *http://www.dlis.dla.mil/cage_welcome.asp.*

* * * * *

PART 207—ACQUISITION PLANNING

■ 4. Section 207.103 is amended by revising paragraph (h)(i)(A) to read as follows:

207.103 Agency-head responsibilities.

* * * * *

(h) * * *

(i) * * *

(A) Must submit the acquisition plan to the SMCA at the following address: Program Executive Officer, Ammunition, ATTN: SFAE–AMO, Building 171, Picatinny Arsenal, NJ 07806–5000. Telephone: Commercial (973) 724–7101; DSN 880–7101;

* * * * *

PART 239—ACQUISITION OF INFORMATION TECHNOLOGY

239.7302 [Amended]

■ 5. Section 239.7302 is amended in paragraph (b)(2)(ii), in the second sentence, by adding, after ''Program'', the parenthetical ''(DARMP)''.

PART 250—EXTRAORDINARY CONTRACTUAL ACTIONS

250.102–70 [Amended]

■ 6. Section 250.102–70 is amended by removing ''2410b'' and adding in its place ''2410(b)''.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.232–7003 [Amended]

■ 7. Section 252.232–7003 is amended in paragraph (a)(2), in the second sentence, by removing ''Facsmile'' and adding in its place ''Facsimile''.

APPENDIX G—ACTIVITY ADDRESS NUMBERS

■ 8. Appendix G to Chapter 2 is amended in Part 2, by adding, in alpha-numerical order, entry ''DABM16'' to read as follows:

APPENDIX G TO CHAPTER 2—ACTIVITY ADDRESS NUMBERS

* * * * *

PART 2—ARMY ACTIVITY ADDRESS NUMBERS

* * * * *

DABM16 U.S. Army Central Command—Afghanistan and Uzbekistan, Director of Joint Contracting Office BAF, APO, AE 09354

* * * * *

■ 9. Appendix G to Chapter 2 is amended in Part 8, by adding, in alpha-numerical order, entry ''NMA501'' to read as follows:

PART 8—NATIONAL IMAGERY AND MAPPING AGENCY ACTIVITY ADDRESS NUMBERS

* * * * *

NMA501 National Imagery and Mapping Agency, Acquisition Technology, 45479 Holiday Drive, Sterling, VA 20166–9411 (ZM51)

[FR Doc. 03–7530 Filed 3–28–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Parts 219 and 226

[DFARS Case 2002–D038]

Defense Federal Acquisition Regulation Supplement; Extension of Contract Goal for Small Disadvantaged Businesses and Certain Institutions of Higher Education

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 816 of the National Defense Authorization Act for Fiscal Year 2003. Section 816 provides for a 3-year extension of the percentage goal for contract awards to small disadvantaged businesses and certain institutions of higher education.

EFFECTIVE DATE: March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena Moy, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–1302; facsimile (703) 602–0350. Please cite DFARS Case 2002–D038.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends DFARS 219.000 and 226.7000 to implement Section 816 of the National Defense Authorization Act for Fiscal Year 2003 (Pub. L. 107–314). Section 816 amends 10 U.S.C. 2323, which establishes a goal for DoD to award 5 percent of contract and subcontract dollars to small disadvantaged business concerns, historically black colleges and universities, and minority institutions. 10 U.S.C. 2323(k) previously contained a termination date of September 30, 2003. Section 816 extends the termination date to September 30, 2006.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2002–D038.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 219 and 226

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR Parts 219 and 226 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 219 and 226 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 219—SMALL BUSINESS PROGRAMS

219.000 [Amended]

■ 2. Section 219.000 is amended in the introductory text by removing ''2003'' and adding in its place ''2006''.

PART 226—OTHER SOCIOECONOMIC PROGRAMS

226.7000 [Amended]

■ 3. Section 226.7000 is amended in paragraphs (a) and (b) by removing ''2003'' and adding in its place ''2006''.

[FR Doc. 03–7529 Filed 3–28–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 386

RIN 2126–AA81

Civil Penalties

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: This document specifies the civil penalties for violating the FMCSA regulations, as adjusted for inflation in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996. The inflation adjustments are reflected in this rulemaking. The Federal Civil Penalties Inflation Adjustment Act authorizes these amendments to the FMCSA penalty regulations.

DATES: The effective date if March 31, 2003.

FOR FURTHER INFORMATION CONTACT: David M. Lehrman, Office of Policy, Plans and Regulation, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; (202) 366–0994, Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

The Debt Collection Improvement Act of 1996

In order to preserve the remedial impact of civil penalties and foster compliance with the law, the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996 (the Act) (Pub. L. 104–134, 110 Stat. 1321–1373), requires Federal agencies to regularly adjust certain civil penalties for inflation. These Acts are now codified at 28 U.S.C. 2461 note. The law requires each agency to make an initial inflationary adjustment for all applicable civil penalties, and to make further adjustments to these penalty amounts at least once every four years.

The law further stipulates that any resulting increases in a civil penalty due to the calculated inflation adjustments: (i) Should apply only to violations which occur after the date the increase takes effect; and (ii) the first adjustment of a civil monetary penalty made pursuant to the Act may not exceed 10 percent of such penalty.

The FMCSA previously adjusted civil penalties for inflation by regulation on March 13, 1998 (63 FR 12413). Subsequent to these adjustments, Congress passed the Transportation Equity Act for the 21st Century (TEA–21) on June 9, 1998 (Pub. L. 105–178, 112 Stat. 107). TEA–21 re-set several penalties at the amounts required prior to adjustment for inflation and created several new categories of penalties. The current penalties are found in 49 CFR part 386, Appendix A and B, except for

those found in paragraph (f) to Appendix B.

Paragraph (f) was amended on October 2, 2002, by removing ''$27,500'' and adding in its place ''$10,000'' (67 FR 61818) as mandated by TEA–21. The October 2002 notice failed to remove the listed minimum penalty of $250. paragraph (f) to Appendix B is re-written today to reflect that there are no minimum penalties for these violations and to correctly reflect the prohibitions mandated by 49 U.S.C. 31144 (as amended by TEA–21), which prohibits all unfit motor carriers from operating in interstate commerce. Any unsatisfactory safety rating, given to motor carriers by FMCSA, is treated by the agency as a determination of unfitness (65 FR 50919, August 22, 2000).

This notice addresses penalties considered to be initial adjustments, which are therefore subject to the statutory 10 percent maximum. The notice also addresses the previously adjusted penalties, amended on March 13, 1998 (63 FR 12413), which are therefore not subject to the statutory 10 percent maximum.

Under 5 U.S.C. 553(b), the FMCSA finds good cause that prior notice and opportunity for comment are unnecessary because these inflation adjustments required by the Act are ministerial acts over which the agency has no discretion. The adjustment simply recognizes that as inflation occurs, penalties should keep pace so that the impact of the penalty is not diminished with the passage of time.

Method of Calculation

Under the Act (28 U.S.C. 2461 note) the inflation adjustment for each applicable civil penalty is determined by increasing the maximum civil penalty amount per violation by the cost-of-living adjustment. The cost-of-living adjustment is defined as the amount by which the Consumer Price Index (CPI) for the month of June of the calendar year preceding the adjustment exceeds the CPI for the month of June of the year in which the amount of such civil penalty was last set or adjusted pursuant to law (section 5(b), 28 U.S.C. 2461 note). Any calculated increase under this adjustment is subject to a specific rounding formula set forth in the Act (section 5(a), 28 U.S.C. 2461 note).

Under 49 U.S.C. 5123, the FMCSA may assess a fine for violations of the Federal Hazardous Materials Regulations (HMR) (49 CFR parts 171–180). The driver, motor carrier, or shipper who violates the HMR is subject to a civil penalty of not less than $250 and not more than $25,000 for each violation. The maximum penalty was adjusted for inflation on March 13, 1998 (63 FR 12413), resulting in an adjusted penalty of $27,500 (*see* 49 CFR part 386, Appendix B, paragraph (e)). But the minimum penalty was not previously adjusted for inflation. This minimum statutory penalty was last set in 1990. The Consumer Price Index was 180 in June 2002, and was approximately 130 in June of 1990 (*see* U.S. Department of Labor CPI index at *ftp://ftp.bls.gov/pub/special.requests/cpi/cpiai.txt*). Thus the inflation factor is 180/130 or 1.38. The new minimum penalty amount after the increase and statutory rounding would thus be the result of multiplying $250 × 1.38 = $345. However, after applying the 10 percent limit on an initial increase, the new minimum penalty amount per violation is $275.

The current maximum penalty of $27,500 was adjusted for inflation in 1998. The Consumer Price Index was 180 in June 2002, and 163 in June 1998. Thus the inflation factor is 108/163 or 1.10. The new maximum penalty amount after the increase and statutory rounding would thus be the result of multiplying $27,500 × 1.10 = $30,250. The Act is instructive as to the rounding method to be employed. The increase is to be rounded to the nearest multiple of $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000. The amount of the increase was $2,750, rounded to the nearest multiple of $5,000 equals a $5,000 adjustment to the current maximum penalty, or a new penalty of $32,500. The rounding adjustment is also consistent with a General Accounting Office (GAO) clarifying letter issued on July 15, 2002 (*see* GAO #B–290021).

The following inflation factors were used to adjust penalties in this final rule: 180/163 or 1.10 for penalties previously adjusted in 1998, and new TEA–21 penalties enacted by Congress that same year; 180/130 or 1.38 for the hazardous materials minimum penalty not previously adjusted since 1990; 180/152 or 1.18 for commercial penalties established in the ICC Termination Act of 1995 (Pub. L. 104–88, 109 Stat. 809) (all commercial penalties are being adjusted for the first time and are subject to the 10 percent maximum increase); and 180/166 or 1.08 for penalties enacted in the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106–159, 113 Stat. 1748 (December 9, 1999). Appendix A, to 49 CFR part 386, paragraph (h) includes MCSIA penalties for operating during a period of suspension for failure to pay penalties as outlined in 49 CFR 386.83 and 386.84. The FMCSA adjusts these penalties for inflation, even though they are only three years old, to place all penalties on the same adjustment schedule. The Act allows for more frequent adjustments, so long as agencies adjust at least every four years. These penalties are subject to the 10 percent maximum adjustment because this is the first adjustment for inflation.

Appendices A and B are now adjusted for inflation.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FMCSA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of the Department of Transportation's regulatory policies and procedures. These inflation adjustments are ministerial acts in compliance with the statute over which FMCSA has no discretion. The FMCSA finds good cause to adopt the rule without prior notice or opportunity for public comment. The agency believes that this rule will not result in a major increase in costs or prices for State or local governments. The law is simply designed to preserve the remedial impact of civil penalties. Consequently, the economic impact of this final rule will be minimal because it will not substantially change the applicable civil penalty amount, but merely adjust the penalty to reflect inflation.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive order 13132, dated August 4, 1999, and it has been determined this action does not have sufficient federalism implications or limit the policymaking discretion of the States.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This action does not contain information collection requirements for purposes of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*).

National Environmental Policy Act

The FMCSA is a new Administration within the Department of

Transportation (DOT). The FMCSA analyzed this rule under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) (NEPA), the Council on Environmental Quality Regulations implementing NEPA (40 CFR parts 1500–1508), and DOT Order 5610.1C, Procedures for Considering Environmental Impacts. This rule would be categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement since this action does not have any effect on the quality of the environment.

Unfunded Mandates Reform Act of 1995

This rule does not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*), that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

The FMCSA has analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environment risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

List of Subjects in 49 CFR Part 386

Administrative procedures, Commercial motor vehicle safety, Highways and roads, Motor carriers, Penalties.

■ In consideration of the foregoing, the FMCSA amends title 49, Code of Federal Regulations, chapter III, part 386 as set forth below:

PART 386—RULES OF PRACTICE FOR MOTOR CARRIER, BROKER, FREIGHT FORWARDER, AND HAZARDOUS MATERIALS PROCEEDINGS

■ 1. The authority citation for part 386 continues to read as follows:

Authority: 49 U.S.C. 13301, 13902, 31132–31133, 31136, 31502, 31504; sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); sec. 217, Pub. L. 105–159, 113 stat. 1748, 1767; and 49 CFR 1.73.

APPENDIX A TO PART 386—[AMENDED]

■ 2. Appendix A to part 386 is amended by revising the figure ''$550'' to read as ''$650'', the figure ''$1,100'' to read as ''$2,100'', the figure ''$10,000'' to read as ''$11,000'', and the figure ''$11,000'' to read as ''$16,000'', whenever they appear throughout the appendix.

APPENDIX B TO PART 386—[AMENDED]

■ 3. In Appendix B to part 386 the introductory text is amended by revising the second sentence to read as follows:

* * * Pursuant to that authority, the inflation-adjusted civil penalties listed in paragraphs (a) through (g) of this appendix supersede the corresponding civil penalty amounts listed in title 49, United States Code. * * *

* * * * *

■ Appendix B to part 386 is further amended as follows:

a. Paragraph (a)(1) is amended by revising the figure ''$500'' to read as ''$550'', and the figure ''$5,000'' to read as ''$5,500''.

■ b. Paragraph (a)(2) is amended by revising the figure ''$5,000'' to read as ''$5,500''.

■ c. Paragraph (a)(3) is amended by revising the figure ''$10,000'' to read as ''$11,000''.

■ d. Paragraph (a)(4) is amended by revising the figure ''$2,500'' to read as ''$2,750''.

■ e. Paragraph (a)(5) is amended by revising the figure ''$2,750'' to read as ''$3,750''.

■ f. Paragraph (b) is amended by revising the figure ''$2,750'' to read as ''$3,750''.

■ g. Paragraph (c) is amended by revising the figure ''$1,100'' to read as ''$2,100'', the figure ''$2,750'' to read as ''$3,750'', and the figure ''$11,000'' to read as ''$16,000'' whenever they appear throughout paragraph (c).

■ h. Paragraph (d) is amended by revising the figure ''$11,000'' to read as ''$16,000''.

■ i. Paragraph (e) is amended by revising the figure ''$250'' to read as ''$275'', and the figure ''$27,500'' to read as ''$32,500'', wherever they appear throughout paragraphs (e)(1) through (e)(3).

■ j. Paragraph (f) is revised to read as follows:

(f) *Operating after being declared unfit by assignment of a final unsatisfactory safety rating.* A motor carrier operating a commercial motor vehicle in interstate commerce after receiving a final unsatisfactory safety rating is subject to a civil penalty of not more than $11,000 (49 CFR 385.13). Each day the transportation continues constitutes a separate offense.

* * * * *

■ k. Paragraph (g) is amended by revising the figure ''$200'' to read as ''$220'' the figure ''$250'' to read as ''$275'', the figure ''$500'' to read as ''$550'', the figure ''$1,000'' to read as ''$1,100'', the figure ''$2,000'' to read as ''$2,200'', the figure ''$5,000'' to read as ''$5,500'', the figure ''$10,000'' to read as ''$11,000'', the figure ''$20,000'' to read as ''$22,000'', the figure ''$25,000'' to read as ''$27,500'', and the figure ''$100,000'' to read as ''$110,000'', whenever they appear throughout paragraph (g).

Issued on: March 20, 2003.

Annette M. Sandberg,

Acting Administrator.

[FR Doc. 03–7378 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–EX–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 020718172–2303–02; I.D. 032503D]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific cod by Catcher Vessels Less Than 60 ft (18.3 m) LOA Using Jig or Hook-and-Line Gear in the Bogoslof Pacific Cod Exemption Area in the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific Cod by catcher vessels less than 60 ft (18.3 m) LOA using jig or hook-and-line gear in the Bogoslof Pacific cod exemption area of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the limit of Pacific cod for catcher vessels less than 60 ft (18.3 m) LOA using jig or

hook-and-line gear in the Bogoslof Pacific cod exemption area in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 27, 2003, 2003, through 2400 hrs, A.l.t., December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

Section 679.22(a)(7)(B) prohibits in all waters within the Bogoslof area directed fishing for pollock, Pacific cod, and Atka mackerel by vessels named on a Federal Fisheries Permit under § 679.4(b), except as provided in paragraph (a)(7)(i)(C). Section 679.22(a)(7)(i)(C) of the regulations provides for an exemption for all catcher vessels less than 60 ft (18.3 m) LOA using jig or hook-and-line gear for directed fishing for Pacific cod and specifies 113 mt of Pacific cod for that exempted fishery. Accordingly, the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 113 metric tons of Pacific cod have been caught by catcher vessels less than 60 ft (18.3 m) LOA using jig or hook-and-line gear in the Bogoslof exemption area described at § 679.22(a)(7)(i)(C)(1). Consequently, the Regional Administrator is prohibiting directed fishing for Pacific cod by catcher vessels less than 60 ft (18.3 m) LOA using jig or hook-and-line gear in the Bogoslof Pacific cod exemption area.

Maximum retainable amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the Bogoslof exemption area limit of Pacific cod caught by vessels using jig or hook-and-line gear, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by 50 CFR 679.22 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 25, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–7648 Filed 3–26–03; 1:47 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212307–3037–02; I.D. 032103D]

Fisheries of the Exclusive Economic Zone Off Alaska; Species in the Rock sole/Flathead sole/''Other flatfish'' Fishery Category by Vessels Using Trawl Gear in Bering Sea and Aleutian Islands management area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for species in the rock sole/flathead sole/''other flatfish'' fishery category by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the second seasonal apportionment of the 2003 halibut bycatch allowance specified for the trawl rock sole/flathead sole/''other flatfish'' fishery category in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 1, 2003, through 1200 hrs, A.l.t., June 29, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The second seasonal apportionment of the 2003 halibut bycatch allowance specified for the trawl rock sole/flathead sole/''other flatfish'' fishery category in the BSAI is 164 metric tons as established by the final 2003 harvest specifications for Groundfish of the BSAI (68 FR 9907, March 3, 2003).

In accordance with § 679.21(e)(7)(v), the Administrator, Alaska Region, NMFS, has determined that the second seasonal apportionment of the 2003 halibut bycatch allowance specified for the trawl rock sole/flathead sole/''other flatfish'' fishery category in the BSAI has been caught. Consequently, NMFS is closing directed fishing for species in the rock sole/flathead sole/''other flatfish'' fishery category by vessels using trawl gear in the BSAI.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the second seasonal apportionment of the 2003 halibut bycatch allowance, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 25, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries National Marine Fisheries Service.

[FR Doc. 03–7647 Filed 3–26–03; 1:47 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 61
Monday, March 31, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2641

RIN 3209–AA14

Post-Employment Conflict of Interest Restrictions; Correction

AGENCY: Office of Government Ethics (OGE).

ACTION: Proposed rule; correction.

SUMMARY: In this document, OGE is correcting a few minor errors in certain sections of the proposed post-employment conflict of interest regulation, which was published by OGE in the **Federal Register** on Tuesday, February 18, 2003.

DATES: Comments on these corrections are invited and must be received on or before May 19, 2003.

FOR FURTHER INFORMATION CONTACT: Richard M. Thomas, Associate General Counsel, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917; Telephone: 202–208–8000; TDD: 202–208–8025; FAX: 202–208–8037.

SUPPLEMENTARY INFORMATION: In this document, OGE is correcting three minor errors in the proposed rule document, which OGE published on February 18, 2003 at 68 FR 7843–7892 (as separate part II), concerning the post-Government employment conflict of interest restrictions of 18 U.S.C. 207 applicable to former executive branch employees. The errors being corrected are as follows: a fifth example following paragraph (g) of proposed § 2641.204 was inadvertently omitted; a note following paragraph (g) of proposed § 2641.205 was mistakenly incorporated into the text of that section as proposed; and some unintended text was included in paragraph (e)(5)(iii)(E) of proposed § 2641.301.

Approved: March 24, 2003.

Amy L. Comstock,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Office of Government Ethics, is correcting the February 18, 2003 publication of the proposed rule on Post-Employment Conflict of Interest Restrictions, which was the subject of FR Doc. 03–3043, as follows:

PART 2641—POST-EMPLOYMENT CONFLICT OF INTEREST RESTRICTIONS

§ 2641.204 [Corrected]

1. On page 7882, in the third column, the examples following paragraph (g) of § 2641.204 are corrected by adding an Example 5 to read as follows:

Example 5 to paragraph (g): A chemist serves in a senior employee position in the Agency for Clean Rivers. Subsequent to his termination from the position, the mission of the Agency for Clean Rivers is expanded and it is renamed the Agency for Clean Water. A number of employees from the Agency for Marine Life are transferred to the reorganized agency. If it is determined that the Agency for Clean Water is substantially the same entity from which the chemist terminated, the section 207(c) bar will apply with respect to the chemist's contacts with all of the employees of the Agency for Clean Water, including those employees who recently transferred from the Agency for Marine Life. He would not be barred from contacting an employee serving in one of the positions that had been transferred from the Agency for Clean Rivers to the Agency for Clean Land.

§ 2641.205 [Corrected]

2. On page 7883, in the second column, the text of paragraph (g) of § 2641.205 is corrected by removing the last sentence and by adding a note following paragraph (g) to read as follows:

Note to paragraph (g): A communication made to an official described in 5 U.S.C. 5312–5316 can include a communication to a subordinate of such official with the intent that the information be conveyed directly to the official and attributed to the former very senior employee.

§ 2641.301 [Corrected]

3. On page 7887, in the first column, the text of paragraph (e)(5)(iii)(E) of § 2641.301 is corrected by removing the parentheses and words ''(or deputy or acting head)''.

[FR Doc. 03–7539 Filed 3–28–03; 8:45 am]

BILLING CODE 6345–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

RIN 0581–AC17

[Doc. # CN–02–006]

User Fees for 2003 Crop Cotton Classification Services to Growers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) is proposing to maintain user fees for cotton producers for 2003 crop cotton classification services under the Cotton Statistics and Estimates Act at the same level as in 2002. This is in accordance with the formula provided in the Uniform Cotton Classing Fees Act of 1987. The 2002 user fee for this classification service was $1.45 per bale. This proposal would maintain the fee for the 2003 crop at $1.45 per bale. The proposed fee and the existing reserve are sufficient to cover the costs of providing classification services, including costs for administration and supervision.

DATES: Comments must be received on or before April 15, 2003.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to Norma McDill, Deputy Administrator, Cotton Program, AMS, USDA, STOP 0224, 1400 Independence Avenue, SW., Washington, DC 20250–0224. Comments should be submitted in triplicate. Comments may also be submitted electronically to: *cottoncomments@usda.gov*. All comments should reference the docket number and the date and the page of this issue of the **Federal Register**. All comments received will be available for public inspection during regular business hours at the above office in Rm. 2641-South Building, 1400 Independence Avenue, SW., Washington, DC. A copy of this notice may be found at: *www.ams.usda.gov/cotton/rulemaking.htm*.

FOR FURTHER INFORMATION CONTACT: Norma McDill, Deputy Administrator, Cotton Program, AMS, USDA, Room 2641–S, STOP 0224, 1400 Independence Avenue, SW., Washington, DC 20250–

0224. Telephone (202) 720–2145, facsimile (202) 690–1718, or e-mail *norma.mcdill@usda.gov*.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866; and, therefore has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5U.S.C. 601 *et seq.*) AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small businesses.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. There are an estimated 35,000 cotton growers in the U.S. who voluntarily use the AMS cotton classing services annually, and the majority of these cotton growers are small businesses under the criteria established by the Small Business Administration (13 CFR 121.601). Continuing the user fee at the 2002 crop level as stated will not significantly affect small businesses as defined in the RFA because:

(1) The fee represents a very small portion of the cost-per-unit currently borne by those entities utilizing the services. (The 2002 user fee for classification services was $1.45 per bale; the fee for the 2003 crop would be maintained at $1.45 per bale; the 2003 crop is estimated at 17,200,000 bales).

(2) The fee for services will not affect competition in the marketplace; and

(3) The use of classification services is voluntary. For the 2002 crop, 17,145,000 bales were produced; and, virtually all of these bales were voluntarily submitted by growers for the classification service.

(4) Based on the average price paid to growers for cotton from the 2001 crop of 29.8 cents per pound, 500 pound bales of cotton are worth an average of $149 each. The proposed user fee for classification services, $1.45 per bale, is less than one percent of the value of an average bale of cotton.

Paperwork Reduction Act

In compliance with OMB regulations (5 CFR part 1320), which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), the information collection requirements contained in the provisions to be amended by this proposed rule have been previously approved by OMB and were assigned OMB control number 0581–0009 under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

It is anticipated that the proposed changes, if adopted, would be made effective July 1, 2003, as provided by the Cotton Statistics and Estimates Act.

Fees for Classification Under the Cotton Statistics and Estimates Act of 1927

The user fee charged to cotton producers for High Volume Instrument (HVI) classification services under the Cotton Statistics and Estimates Act (7 U.S.C. 473a) was $1.45 per bale during the 2002 harvest season as determined by using the formula provided in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102–237. The fees cover salaries, costs of equipment and supplies, and other overhead costs, including costs for administration, and supervision.

This proposed rule establishes the user fee charged to producers for HVI classification at $1.45 per bale during the 2003 harvest season.

Public Law 102–237 amended the formula in the Uniform Cotton Classing Fees Act of 1987 for establishing the producer's classification fee so that the producer's fee is based on the prevailing method of classification requested by producers during the previous year. HVI classing was the prevailing method of cotton classification requested by producers in 2002. Therefore, the 2003 producer's user fee for classification service is based on the 2002 base fee for HVI classification.

The fee was calculated by applying the formula specified in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102–237. The 2002 base fee for HVI classification exclusive of adjustments, as provided by the Act, was $2.28 per bale. An increase of .84 percent, or 2 cents per bale, increase due to the implicit price deflator of the gross domestic product added to the $2.28 would result in a 2003 base fee of $2.30 per bale. The formula in the Act provides for the use of the percentage change in the implicit price deflator of the gross national product (as indexed for the most recent 12-month period for which statistics are available). However, gross national product has been replaced by gross domestic product by the Department of Commerce as a more appropriate measure for the short-term monitoring and analysis of the U.S. economy.

The number of bales to be classed by the United States Department of Agriculture from the 2003 crop is estimated at 16,793,610 bales. The 2003 base fee was decreased 15 percent based on the estimated number of bales to be classed (1 percent for every 100,000 bales or portion thereof above the base of 12,500,000, limited to a maximum adjustment of 15 percent). This percentage factor amounts to a 35 cents per bale reduction and was subtracted from the 2003 base fee of $2.30 per bale, resulting in a fee of $1.95 per bale.

With a fee of $1.95 per bale, the projected operating reserve would be 51.09 percent. The Act specifies that the Secretary shall not establish a fee which, when combined with other sources of revenue, will result in a projected operating reserve of more than 25 percent. Accordingly, the fee of $1.95 must be reduced by 50 cents per bale, to $1.45 per bale, to provide an ending accumulated operating reserve for the fiscal year of 25 percent of the projected cost of operating the program. This would establish the 2003 season fee at $1.45 per bale.

Accordingly, § 28.909, paragraph (b) would reflect the continuation of the HVI classification fee at $1.45 per bale.

As provided for in the Uniform Cotton Classing Fees Act of 1987, as amended, a 5 cent per bale discount would continue to be applied to voluntary centralized billing and collecting agents as specified in § 28.909 (c).

Growers or their designated agents receiving classification data would continue to incur no additional fees if only one method of receiving classification data was requested. The fee for each additional method of receiving classification data in § 28.910 would remain at 5 cents per bale, and it would be applicable even if the same method were requested. The fee in § 28.910 (b) for an owner receiving classification data from the central database would remain at 5 cents per bale, and the minimum charge of $5.00 for services provided per, monthly billing period would remain the same. The provisions of § 28.910 (c) concerning the fee for new classification memoranda issued from the central

database for the business convenience of an owner without reclassification of the cotton will remain the same.

The fee for review classification in § 28.911 would be maintained at $1.45 per bale.

The fee for returning samples after classification in § 28.911 would remain at 40 cents per sample.

A 15-day comment period is provided for public comments. This period is appropriate because it is anticipated that the proposed changes, if adopted, would be made effective July 1, 2003, as provided by the Cotton Statistics and Estimates Act.

List of Subjects in 7 CFR Part 28

Administrative practice and procedure, Cotton, Cotton samples, Grades, Market news, Reporting and record keeping requirements, Standards, Staples, Testing, Warehouses.

For the reasons set forth in the preamble, 7 CFR Part 28 is proposed to be amended as follows:

PART 28—[Amended]

1. The authority citation for 7 CFR Part 28, Subpart D, continues to read as follows:

Authority: 7 U.S.C. 471–476.

2. In § 28.909, paragraph (b) is revised to read as follows:

§ 28.909 Costs.

* * * * *

(b) The cost of High Volume Instrument (HVI) cotton classification service to producers is $1.45 per bale.

* * * * *

3. In § 28.911, the last sentence of paragraph (a) is revised to read as follows:

§ 28.911 Review classification.

(a) * * * The fee for review classification is $1.45 per bale.

* * * * *

Dated: March 24, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–7631 Filed 3–28–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Docket No. FV03–927–1]

Winter Pears Grown in Oregon and Washington; Continuance Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a continuance referendum be conducted among eligible growers of winter pears in Oregon and Washington to determine whether they favor continuance of the marketing order regulating the handling of winter pears grown in the production area.

DATES: The referendum will be conducted from April 16 through April 30, 2003. To vote in this referendum, growers must have been engaged in producing winter pears within the production area during the period July 1, 2001, through June 30, 2002.

ADDRESSES: Copies of the marketing order may be obtained from USDA, Northwest Marketing Field Office, 1220 SW Third Avenue, Room 369, Portland, Oregon, 97204, or the Office of the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Stop 0237, Washington, DC, 20250–0237.

FOR FURTHER INFORMATION CONTACT: Gary D. Olson, Regional Manager, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1220 SW Third Avenue, Room 369, Portland, OR 97204; telephone (503) 326–2724; fax (503) 326–7440; or Melissa Schmaedick, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, PO Box 1035, Moab, UT 84532; telephone (435) 259–7988; fax (435) 259–4945.

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Order No. 927 (7 CFR part 927), hereinafter referred to as the ''order,'' and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act,'' it is hereby directed that a referendum be conducted to ascertain whether continuance of the order is favored by growers. The referendum shall be conducted during the period April 16 through April 30, 2003, among eligible winter pear growers in the production area. Only growers that were engaged in the production of winter pears in the States of Oregon and Washington during the period of July 1, 2001, through June 30, 2002, may participate in the continuance referendum.

USDA has determined that continuance referenda are an effective means for determining whether growers favor continuation of marketing order programs. The USDA would consider termination of the order if continuance is favored by less than two-thirds of the growers voting in the referendum and by growers of less than two-thirds of the volume of winter pears represented in the referendum.

In evaluating the merits of continuance versus termination, the USDA will not only consider the results of the continuance referendum. The USDA will also consider all other relevant information concerning the operation of the order and the relative benefits and disadvantages to growers, processors, and consumers in order to determine whether continued operation of the order would tend to effectuate the declared policy of the Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the ballot materials used in the referendum herein ordered have been submitted to and approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0177. It has been estimated that it will take an average of 30 minutes for each of the approximately 1,528 producers of winter pears in the production area to cast a ballot. Participation is voluntary. Ballots postmarked after April 30, 2003, will be marked invalid and not included in the vote tabulation.

Gary D. Olson and Susan M. Hiller of the Northwest Marketing Field Office, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, are hereby designated as the referendum agents of USDA to conduct such referendum. The procedure applicable to the referendum shall be the ''Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended'' (7 CFR 900.400 *et seq.*).

Ballots will be mailed to all growers of record and may also be obtained from the referendum agents and their appointees.

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 601–674.

Dated: March 24, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–7635 Filed 3–28–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 956

[Docket No. FV02–956–1 PR]

Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Withdrawal of a Proposed Rule

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Withdrawal of proposed rule.

SUMMARY: This action withdraws a proposed rule published in the **Federal Register** on July 22, 2002 (67 FR 47741), and reopened for further comments on November 1, 2002 (67 FR 66578), on the establishment of grade and inspection requirements for Walla Walla sweet onions. The order regulates the handling of sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon and is administered locally by the Walla Walla Sweet Onion Marketing Committee (Committee). The Committee met on November 21, 2002, and unanimously recommended changes to its original recommendation. The administrative record raises questions as to the nature and purpose of the proposal and possible alternatives. Therefore, the proposed rule is being withdrawn for further consideration by the Committee.

DATES: Effective April 1, 2003.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Suite 385, Portland. Oregon 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: Marketing Agreement and Order No. 956, both as amended (7 CFR part 956), regulate the handling of Walla Walla sweet onions grown in Southeast Washington and Northeast Oregon, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

This action withdraws a proposed rule published in the **Federal Register** on July 22, 2002 (67 FR 47741), and reopened for further comments on November 1, 2002 (67 FR 66578), on the establishment of grade and inspection requirements for Walla Walla sweet onions. Specifically, the proposed rule would have required all Walla Walla sweet onions handled prior to June 10 of each marketing season to be inspected and be at least U.S. Commercial grade. In addition, the Committee would have funded the total cost of all required inspections. The primary intent behind the proposal was to help ensure the maturity and marketability of early season sweet onions. A secondary goal was to help prevent onions from other production areas from being mislabeled and marketed as Walla Walla sweet onions.

During the initial comment period, July 22 through September 20, the Department of Agriculture (USDA) received one timely comment. This comment, which may be reviewed on the Internet at *http://www.ams.usda.gov/fv/modockets/956%20comments/2002onions.htm,* raised several questions regarding the proposal. To facilitate further public review of the proposed rule, USDA reopened the comment period from November 1 through November 22, 2002.

During the reopened comment period, the Committee met and unanimously recommended early mandatory inspections on Walla Walla sweet onions, but prior to June 1 of each year rather than June 10 as originally recommended. The Committee believes that a requirement for valid inspection certificates on all lots of Walla Walla sweet onions being shipped prior to June 1 would enhance compliance efforts in the prevention of the misrepresentation and mislabeling of onions.

The administrative record raises questions as to the nature and purpose of the proposal and possible alternatives. Therefore, the proposed rule is being withdrawn for further consideration by the Committee.

The proposed rule regarding the establishment of grade and inspection requirements for sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon published in the **Federal Register** July 22, 2002, (67 FR 47741) is hereby withdrawn.

List of Subjects in 7 CFR Part 956

Marketing Agreements, Onions, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 601–674.

Dated: March 24, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–7632 Filed 3–28–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14644; Airspace Docket No. 03–AGL–01]

Proposed Modification of Class E Airspace; Kenton, OH; Proposed Rescission of Class E Airspace; Bellefontaine, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to modify Class E airspace at Kenton, OH, and rescind Class E airspace at Bellefontaine, OH. Standard Instrument Approach Procedures (SIAPs) have been developed for a new airport at Bellefontaine, OH, which has been named Bellefontaine Regional Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action would modify the existing controlled airspace for Hardin County Airport and rescind the existing controlled airspace for the old Bellefontaine Municipal Airport.

DATES: Comment must be received on or before Mary 29, 2003.

ADDRESSES: Send comments on the proposal to the Docket Management

System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket Number FAA–2003–14644/ Airspace Docket No. 03–AGL–01, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this document must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–14644/Airspace Docket No. 03–AGL–01.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Kenton, OH, for Hardin County Airport, and rescind Class E airspace at Bellefontaine Municipal Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this proposed regulation—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

Paragraph 6005—Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Bellefontaine, OH [Rescind]

AGL OH E5 Kenton, OH [Revised]

That airspace extending upward from 700 feet above the surface bounded by a line beginning at lat.40°43′34″ N., long. 83°33′51″ W., to lat. 40°38′16″ N., long. 83°28′39″ W., to lat. 40°30′37″ N., long. 83°′57″ W., to lat. 40°24′00″ N., long. 83°33′37″ W., to lat. 40°13′31″ W., long. 83°40′22″ W., to lat. 40°11′47″ N., long. 83°52′11″ W., to lat. 40°16′44″ N., long. 83°01′10″ W., to lat. 40°24′31″ N., long. 84°02′39″ W., to lat. 40°31′30″ N., long. 83°56′56″ W., to lat. 40°32′35″ N., long. 83°46′53″ W., to lat. 40°38′56″ N., long. 83°48′49″ W., to lat. 40°43′59″ N., long. 83°42′14″ W., to the point of beginning, excluding that airspace within the Urbana, OH Class E airspace area.

* * * * *

Dated: Issued in Des Plaines, Illinois, on March 13, 2003.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 03–7663 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 204

RIN 1010–AC30

Accounting and Auditing Relief for Marginal Properties

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Supplementary proposed rule.

SUMMARY: MMS is proposing new regulations to implement certain provisions in the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996. These regulations would explain how lessees and their designees could obtain accounting and auditing relief for Federal oil and gas leases and unit and communitization agreements that qualify as marginal properties.

EFFECTIVE DATE: Comments must be submitted on or before May 30, 2003.

ADDRESSES: Address your comments, suggestions, or objections regarding this proposed rule to:

By regular U.S. mail. Minerals Management Service, Minerals Revenue Management, Regulations and FOIA Team, P.O. Box 25165, MS 320B2, Denver, Colorado 80225–0165; or

By overnight mail or courier. Minerals Management Service, Minerals Revenue Management, Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225; or

By e-ail. MRM.comments@mms.gov. Please submit Internet comments as an ASCII file and avoid the use of special characters and any form of encryption. Also, please include ''Attn: RIN 1010–AC30'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, call the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Paul A. Knueven, Chief, Regulation and FOIA Team, Minerals Revenue Management, MMS, telephone (303) 231–3316, fax (303) 231–3385, or e-mail *Paul.Knueven@mms.gov.*

SUPPLEMENTARY INFORMATION: The principal authors of this rule are Sarah L. Inderbitzin of the Office of the Solicitor and David A. Hubbard of Minerals Revenue Management, MMS, Department of the Interior.

I. Background

On August 13, 1996, the President signed into law the Federal Oil and Gas Royalty Simplification and Fairness Act (RSFA).[1] RSFA amends the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA).[2] Section 7 of RSFA allows MMS and the State concerned (defined under RSFA as ''a State which receives a portion of royalties or other payments under the mineral leasing laws from [a Federal onshore or OCS oil and gas lease]'')[3] to provide royalty prepayment and regulatory relief for marginal properties for Federal onshore and Outer Continental Shelf (OCS) oil and gas leases.[4] The stated purpose of granting relief to marginal properties under RSFA is to promote production, reduce administrative costs, and increase net receipts to the United States and the States.[5] Specifically, paragraph (c) of the new 30 U.S.C. 1726 enacted by RSFA section 7 directed the Secretary (and States that had received a delegation of audit authority) to ''provide accounting, reporting, and auditing relief that will encourage lessees to continue to produce and develop'' marginal properties, ''provided that such relief will only be available to lessees in a State that allows.'' (There is an exception to the requirement for State allowance if royalty payments from a lease are not shared with a State under applicable law.)

In response to the RSFA section 7 amendments, MMS conducted three workshops to receive input from a wide variety of constituent groups to develop a proposed rule. The workshops were held at MMS offices in Denver, Colorado, on October 31, 1996, January 23, 1997, and November 5, 1997. Representatives from several Federal and State government organizations participated along with industry organizations representing both small and large Federal oil and gas lessees. The input received during these workshops was instrumental in developing the proposed rule that was published in the **Federal Register** on January 21, 1999 (64 FR 3360).

Public comments received in response to the proposed rule were sharply contradictory. The comments fell into two general categories:

1. The States believed that MMS was offering too much relief to industry; and

2. Industry believed that the rule was too complicated and did not offer enough relief.

Because of the contradictory opinions, the Associate Director for Minerals Revenue Management asked the Royalty Policy Committee (RPC) of the Department of the Interior's Minerals Management Advisory Board to form a subcommittee to review the marginal property issue and make recommendations to the Department on how MMS should proceed. The RPC appointed a subcommittee with members from several industry associations and the major States affected by the relief provisions. MMS employees and a representative of the Office of the Solicitor served as technical advisors to the subcommittee.

The RPC subcommittee prepared a report that was submitted to the RPC on March 27, 2001. The RPC accepted the subcommittee's recommendations. On August 2, 2001, the Acting MMS Director—on behalf of the Secretary of the Interior—approved the report and advised MMS to proceed with a second proposed rule incorporating the subcommittee's recommendations. This second proposed rule includes the RPC subcommittee's recommendations with one exception described below.

II. Comments on the 1999 Proposed Rule

MMS received comments on the initial proposed rule published on January 21, 1999 (64 FR 3360) from the following nine entities:

- 3 States;
- 1 State and Indian audit organization;
- 2 oil and gas producers;
- 2 industry associations; and
- 1 law firm representing 1 industry association and 11 oil and gas companies.

These comments are analyzed and discussed below:

Definition of Base Period

1999 Proposed Rule. In § 204.2, MMS proposed to define the base period as the 12-month period from October 1 through September 30 immediately preceding the calendar year in which the lessee takes or requests marginal property relief.

Public Comments. One State commented that the base period should track as closely as possible to the beginning of the applicable calendar year in which the lessee takes marginal property relief. One producer requested that the base period be moved from October 1 through September 30 to

[1] Pub. L. 104–185, as corrected by Pub. L. 104–200.

[2] 30 U.S.C. 1711 *et seq.*

[3] 30 U.S.C. 1701(31).

[4] 30 U.S.C. 1726.

[5] 30 U.S.C. 1726(a).

September 1 through August 31 because the proposed period did not allow sufficient time for producers to report. One industry association also requested that the base period be moved back to give industry more time for calculations.

RPC Subcommittee Recommendation. The subcommittee members discussed the need to change the proposed base period. Producer groups indicated that the base period needed to be moved back at least 1 or 2 months. However, one State representative said that the base period needed to be as close to the calendar year as possible, but the State could accept moving it back to September 1 through August 31. The subcommittee ultimately recommended changing the base period to July 1 through June 30. The subcommittee felt that it was necessary to move the base period back in order for MMS to publish a **Federal Register** notice before the first of the calendar year listing which States were participating in the marginal property relief options. The subcommittee believes that the following schedule should meet the needs of all parties (industry, States, and MMS):

August 15: Operators submit production reports for June production.

October 1: MMS furnishes States a report of marginal properties for July-June base period.

November 1: States notify MMS if they wish to opt in or out of marginal property accounting and auditing relief (if a State fails to notify MMS, they are deemed to have opted out).

December 1: MMS publishes a **Federal Register** notice listing which States are opting in or out.

MMS Response. We agree with the RPC subcommittee recommendation to change the period to July 1 through June 30.

Definition of ''Marginal Property''

1999 Proposed Rule. In § 204.4, MMS proposed to define a ''marginal property'' as a property having average daily well production of less than 15 barrels of oil equivalent (BOE) per well per day during the base period.

Public Comments. The law firm and the two industry associations suggested that MMS establish separate production levels for different situations, particularly offshore and onshore properties. One State was concerned that using all producing wells in the calculation could result in classifying properties with very prolific wells as marginal. The same State also objected to MMS delegating to itself the determination of what marginal production is because RSFA stated that MMS and the States should determine the definition jointly.

RPC Subcommittee Recommendation. The subcommittee members discussed the comment that separate qualification rates should be established for offshore and onshore. MMS representatives advised the subcommittee that industry had previously formed an operational group to establish a rate for offshore, but the group could not agree and the idea was dropped. Subcommittee members also discussed whether the States could set their own individual qualification rates. The subcommittee members decided this was not acceptable because of the administrative burden associated with tracking and auditing different rates for different States. One State representative was concerned that some States might want to offer some relief but not at 15 BOE. The RPC subcommittee did not recommend any changes in the definition of ''marginal property.''

MMS Response. We propose to retain the definition of ''marginal property'' contained in the 1999 proposed rule. MMS agrees with the subcommittee's conclusion that using different State production levels to define ''marginal property'' would be too administratively onerous for use. Such an approach also would result in a Federal law having different meanings in different States, which would raise serious legal concerns.

Although using all producing wells in the calculation to determine whether a property is marginal may result in some leases or units with high-producing wells being classified as marginal properties, we believe it would be too administratively burdensome to allow relief for individual wells, rather than by lease or unit or communitization agreement (hereinafter referred to as ''agreement'' in this context) as the rule provides. MMS believes that the proposed rule does allow the Secretary (acting through MMS) and the State to ''jointly determine, on a case-by-case basis, the amount of what marginal production from a lease or leases or well or wells, or parts thereof'' may obtain royalty accounting and auditing relief, as the statute provides (30 U.S.C. 1726(a)). Several State representatives on the subcommittee ultimately recommended using the production level in the proposed rule. Moreover, any State that does not agree with the production levels MMS ultimately adopts under this rule may decline to allow accounting, reporting, and auditing relief under § 204.208.

Statutory Requirements for Relief

1999 Proposed Rule. In § 204.5, MMS reiterated the RSFA statutory requirements that any relief granted for marginal properties must promote production, reduce administrative costs, and increase net receipts to the Federal Government and the States.

Public Comments. One State stated that the proposed rule was contrary to law because it was unlikely to promote production or increase net receipts. Further, the State argued that there is no way to determine if the relief will increase net receipts. The State also noted that we must take into account the loss of the time value of royalty receipts if we allow delayed reporting.

RPC Subcommittee Recommendation. The subcommittee discussed numerous times the difficulty in finding possible relief options that would meet all three RSFA objectives. The subcommittee recommended that two relief options be retained—cumulative reporting and ''other'' relief.

MMS Response. We understand the State's concerns, but do not agree that the relief offered will not promote production or increase net receipts. Because use of the annual reporting option is limited to properties producing 1,000 BOE or less annually, we believe there will be little loss of time value of the royalties. Moreover, we believe the administrative savings to the lessee will promote production, and the administrative savings to MMS and the States will more than offset any possible loss of interest. A member of MMS's reengineering team informed the subcommittee that each different relief option would require modifications to MMS's compliance programs and thus add cost. We propose to limit our relief options to those recommended by the subcommittee to avoid being cost-prohibitive.

State Liability for Denials of Requests for Relief

1999 Proposed Rule. In § 204.6, MMS proposed that if MMS denied a request for relief based on a State's denial, then the decision was final for the Department of the Interior and could not be appealed administratively.

Public Comments. One State believed that MMS's interpretation of RSFA was incorrect and left the States open to litigation in Federal court. Another State indicated that the proposed rule did not clearly acknowledge that nothing in RSFA serves to waive a State's immunity from suit.

RPC Subcommittee Recommendation. All of the State representatives on the subcommittee expressed grave concern

over the language in the proposed rule that said if a decision not to grant relief is based on a State's denial, the decision would not be subject to administrative appeal. This would put any challenge to a decision not to grant relief directly into Federal District Court. The States were not willing to accept that risk. Based on this discussion, the subcommittee sent a request to seven State agencies asking their opinion on the comments raised by State representatives on the subcommittee. Only one agency responded, stating that it agreed with the other States' concerns. Consequently, the subcommittee recommended that each State be given the ability to determine, before each calendar year, whether it will allow either the notification-based relief option or the request-based relief option, or both. If a State decides to allow the request-based relief option, the State would thereby agree to let MMS make the final decision on the relief request. That decision could be appealed administratively within the Department of the Interior.

MMS Response. We agree with the subcommittee's recommendation. We also believe that modifying the proposed rule at § 204.207(b) to read as follows would eliminate the States' concerns:

> If, for your marginal property, there is a State concerned that has determined in advance that it will allow either or both of the relief options under this subpart, MMS will decide whether to approve, deny, or modify your relief request after consulting with the State concerned.

Thus, the approval process under this proposed rule is like the current process for issuance of orders where the State has performed the audit. Although the State is consulted regarding whether to grant, deny or modify relief, MMS would ultimately issue the decision and the State would not be subject to suit in Federal District Court. Moreover, any State that does not wish to allow accounting and reporting relief may opt out.

Who May Request Relief

1999 Proposed Rule. In § 204.201, MMS proposed that a lessee or the lessee's designee of a Federal property could obtain relief if the property qualified as marginal. Further, the lessee or lessee's designee could request relief only for the lessee's fractional interest in the property.

Public Comments. One industry association liked the fact that not all lessees in a property have to seek relief in order for an individual lessee to take relief on the lessee's portion. One State commented that RSFA did not allow designees to apply for relief in place of the lessee.

RPC Subcommittee Recommendation. The subcommittee suggested retaining the original proposed language concerning designees.

MMS Response. We agree with the State that RSFA does not specifically state that designees may seek relief on behalf of lessees. However, it also does not specifically preclude such action. Indeed, 30 U.S.C. 1726(c) merely authorizes the Secretary and delegated States to provide relief ''to encourage lessees to continue to produce and develop properties'' and that relief will only be ''available to lessees in a State that allows'' such relief. The statute is silent about who may request relief. Therefore, because the statute is silent, and designees are acting as the lessee's agent, we believe that it is reasonable and consistent with RSFA to authorize designees to request relief under this rulemaking.

Cumulative Reporting and Payment Relief

1999 Proposed Rule. In § 204.203, MMS proposed to allow lessees to report quarterly, semi-annually, or annually depending upon the volume of royalty BOE produced on the property.

Public Comments. One State objected to allowing payments less often than monthly because that is what is required by lease terms. The law firm commented that cumulative reporting should not be less often than annual. One industry association suggested that the thresholds for the lessee to be allowed to submit cumulative reports should be higher. The other industry association was concerned that lessees could not perform the complicated calculations to determine the level of relief and suggested MMS establish a consistent production level for eligibility for relief. The industry association also stated that the calculations to determine cumulative royalty reporting relief were too narrow and too burdensome and all marginal properties should get the same relief. The association also suggested that MMS eliminate the requirement to report allowances separately on marginal properties and explain how estimates would work with reporting less often than monthly. One State was concerned that MMS would have to develop a separate database to track reporting dates and royalty rates by lessee.

RPC Subcommittee Recommendation. A representative of the MMS financial reengineering team was invited to a subcommittee meeting on cumulative reporting. The reengineering team representative stated that MMS would have to make some modifications to its financial system in order to process reporting on a periodic, cumulative basis. She explained that each reporting frequency would require funding for system modifications; thus, we would probably have to limit the available relief options to avoid being cost-prohibitive. Consequently, the subcommittee recommended that only annual cumulative reporting be retained as a notification-based relief option and that this option be limited to marginal properties producing 1,000 BOE or less annually.

MMS Response: We agree with the subcommittee's recommendations. Moreover, with respect to one State's concern regarding the lease instrument's requirement that lessees pay monthly, the Government may by rule waive an obligation under the lease terms if doing so does not change the lessee's position to its detriment.

Complex Calculations

1999 Proposed Rule. In §§ 204.203, 204.204, and 204.205, the level of relief in each reporting option was based on various levels of marginal production. The calculations required lessees to multiply the BOE attributable to a marginal property by the applicable lease royalty rate.

Public Comments. One State pointed out that MMS did not provide any rationale for the volume cut-offs for relief. Another State commented that it was unclear how MMS derived production levels for the levels of relief.

RPC Subcommittee Recommendation. Discussion in the subcommittee centered on the complexity of the calculations required to determine whether a marginal property qualified for a particular form of accounting relief. The proposed rule included five different production levels for the five different forms or levels of accounting relief. The subcommittee ultimately decided to recommend volume limits based on total BOE rather than royalty BOE. The subcommittee also reduced the number of volume levels from five to one. This simplified the calculations significantly.

MMS Response. We agree with the subcommittee's recommendations.

Net Adjustment Reporting

1999 Proposed Rule. In § 204.204, MMS proposed to allow net adjustment reporting as one of the notification-based relief options. In this reporting scenario, lessees could adjust a previously-reported royalty line in a one-line net entry on the Report of Sales and Royalty Remittance, Form MMS–

2014, rather than using MMS's traditional two-line adjustment process.

Public Comments. One State objected to allowing net adjustments. One industry association thought net adjustment reporting should be allowed for all leases under MMS's reengineered system. The law firm, however, commented that net adjustments would not be ''relief'' for marginal properties if it is allowed for all reporters in the reengineered system.

RPC Subcommittee Recommendation. The subcommittee members discussed the problems MMS's financial reengineering team had encountered in trying to implement net adjustment reporting. Because of very specific requirements in FOGRMA for certain data elements to be displayed on the Explanation of Payments (EOP) sent to States and tribes, the reengineering team and MMS's industry partners found net adjustment reporting unworkable. However, MMS continues to look for acceptable net adjustment reporting options for reengineering purposes. Based on MMS's continuing efforts to offer net adjustment reporting for all reporters, the subcommittee recommended that the net adjustment reporting relief option be dropped from the proposed rule.

MMS Response. We agree with the subcommittee's recommendation.

''Rolled-Up'' Reporting Relief Option

1999 Proposed Rule. In § 204.205, MMS proposed to allow ''rolled-up'' reporting as one of the notification-based relief options. In this reporting scenario, lessees could report all selling arrangements for a revenue source under a single selling arrangement on the Form MMS–2014.

Public Comments. The law firm stated that ''rolled-up'' reporting was not significant relief. One of the industry associations agreed that if all product codes could not be rolled up, this was not significant relief.

RPC Subcommittee Recommendation. The subcommittee recommended that the rolled-up reporting relief option be dropped from the proposed rule. This recommendation was, again, associated with the problem of accommodating required EOP information and the fact that selling arrangements were dropped from the revised Form MMS–2014 effective October 1, 2001.

MMS Response. We agree with the subcommittee's recommendation.

Alternate Valuation Relief Option

1999 Proposed Rule. In § 204.206, MMS proposed to allow lessees to request approval to report and pay royalties using a valuation method other than that required under 30 CFR part 206.

Public Comments. One State and one industry association did not think alternative valuation relief was necessary because lessees already have that option under current valuation regulations. The law firm was troubled by the provision that the proposed valuation method should ''approximate 30 CFR part 206.'' The law firm stated that with all the litigation currently in progress, it would be difficult for someone to determine what that value should be. Another State commented that the proposed rule invited litigation because there was no way for a State or MMS to determine whether an alternate valuation method would ''approximate'' royalties in the future. The State further added that alternate valuation relief was not accounting, reporting or auditing relief but really royalty relief.

RPC Subcommittee Recommendation. The subcommittee recommended dropping this option from the proposed rule.

MMS Response. We agree with removal of this option for the reasons stated by the commenters. Moreover, alternative valuation is still an option a lessee may request under the other relief option in § 204.203 of this second proposed rule.

1999 Proposed Rule. In § 204.211, MMS proposed how it would review requests for alternative relief. MMS did not propose time frames within which it would review requests.

RPC Subcommittee Recommendation. The subcommittee recommended that MMS have 120 days to review alternative relief requests. The subcommittee recommended that if MMS did not complete the review within the prescribed 120 days, requests would be deemed ''approved.''

MMS Response. MMS has not determined whether to adopt the RPC subcommittee's recommendations. We are concerned about deeming a request ''approved'' based solely on the length of time elapsed after receipt of the request without any Department review. One alternative is to deem the request denied if MMS does not approve or disapprove a lessee's request within 120 days after MMS received the request. Because denial of a request may be appealed, that would give the Department the opportunity to review the request and make an informed decision. The other alternative is to have no timing requirements by not including any provision at all.

Because of these concerns we are specifically requesting comments on:

- Whether there should be a time limit on MMS approval after it receives a request for reporting, accounting, and auditing relief;
- Whether the request should be deemed approved or denied after some time period, and what that period should be; and
- Any other alternative approaches.

Audit Relief Option

1999 Proposed Rule. In § 204.207, MMS proposed to allow audit relief such as audits of limited scope, audits coordinated with other State or Federal agencies, or audits by independent public accountants.

Public Comments. One State objected to any limit on the scope of audits. The State further added that independent auditors do not review whether royalties are paid correctly. Another State stated that it did not believe that audit relief was warranted and would not participate in it. The third State wanted to remove the audit relief option related to ''coordinated royalty and severance tax audits'' because it compromised the State's right to audit. The law firm stated that audit relief was not much relief because under the current strategy marginal properties are seldom audited. One industry association agreed that audit relief was not much relief because the States and MMS already practice coordinated audits. The other industry association, however, strongly supported audit relief.

RPC Subcommittee Recommendation. The subcommittee recommended dropping this option from the proposed rule.

MMS Response. We agree with removal of this option for the reasons stated by the State commenters. Moreover, audit relief is still an option a lessee may request under the ''other'' relief option in § 204.203 of this second proposed rule.

Other Relief Option

1999 Proposed Rule. In § 204.208, MMS proposed to allow a lessee to request any type of accounting and auditing relief that was appropriate for a specific marginal property provided that it was not specifically prohibited.

Public Comments. One State opposed the other relief option because the burden to evaluate the request was too great for a meaningless level of cost savings.

RPC Subcommittee Recommendation. The subcommittee members discussed all three approval-based relief options contained in the 1999 proposed rule. Because of the sensitivities surrounding what was in the original proposal, the subcommittee decided to recommend an approval-based relief option called ''other'' relief. Other relief would apply

to all marginal properties and could be anything within MMS authority that the lessee or his/her designee believes would be marginal property relief. The lessee would need to submit a proposal to MMS for approval. After consultation with the State or States concerned, MMS would decide whether to grant the requested relief. Examples of what might be considered are payments made more than annually but less than monthly or an alternative valuation method.

MMS Response. We agree with the subcommittee's recommendation. Further, we disagree with one State's comment that such an option is too great a burden relative to any savings. As this second proposed rule states, any relief requested must meet the statutory requirements in RSFA to promote production, increase net receipts, and reduce administrative costs.

Disallowed Relief Options

1999 Proposed Rule. In § 204.209, MMS listed relief items that MMS would not approve if requested by lessees.

Public Comments. One State wanted to add three items to the types of relief that MMS would not approve. The items were any relief request that (1) decreases royalty income below true market value, (2) increases allowances, or (3) reduces royalty-bearing volumes.

RPC Subcommittee Recommendation. The subcommittee recommended retaining the list of disallowed items with no changes.

MMS Response. We believe that § 204.203(a)(1) in this second proposed rule, which provides that any alternative valuation methodology must approximate royalties payable under 30 CFR part 206, addresses the State's concern.

Notification-Based Relief

1999 Proposed Rule. In § 204.210(a), MMS described the information a lessee must submit to MMS before taking any notification-based relief.

Public Comment. One industry association supported notification-based relief rather than request-based relief. The other industry association did not want any required notification for taking relief in §§ 204.203, 204.204, and 204.205.

Two States opposed the automatic relief options. One of those States indicated that all relief should be gained through an approval process. One industry association liked the provision that would allow lessees to file a single notification for multiple marginal properties.

RPC Subcommittee Recommendation. The subcommittee recommended only one type of notification-based relief—cumulative annual reporting.

MMS Response. We agree with the subcommittee recommendation to allow only notification-based relief for annual reporting.

Approval Process

1999 Proposed Rule. In §§ 204.212 and 204.213, MMS described the approval process for request-based relief.

Public Comments. All three States thought that the approval process placed too much administrative burden on the States. One State objected to MMS telling the States what the scope, timing or process should be for its review of a request. The same State noted that MMS cannot tell a State who in the State will make determinations on relief or how long they have to make the determinations. One industry association suggested that authority to approve alternative valuation should be delegated to someone below the Assistant Secretary for Land and Minerals Management (ASLM). The other industry association wanted approval authority for all properties to be with the ASLM. The law firm, one State, and one industry association commented that they did not agree with the fact that the regulation required States to do things within specified time periods but not MMS. One State did not agree with the provision that if the State did not notify MMS of its decision within 30 days then the State is deemed to agree with MMS's determination. One industry association was concerned that States might be given more than 30 days to review and decide relief options. The same industry association supported publication of States' decisions to allow or disallow certain types of relief and wanted MMS and the States to develop criteria for analyzing relief requests.

RPC Subcommittee Recommendation. The subcommittee recommended that MMS consult with the State concerned about a request for relief rather than requiring a decision from the State in a specific period of time.

MMS Response. The State's concerns regarding timing are no longer an issue because this proposed rule now requires consultation with the State concerned, rather than specific timing requirements. See discussion on proposed § 204.207(b) under the topic ''State Liability'' above.

Length of Relief

1999 Proposed Rule. In § 204.217, MMS proposed that any approved relief would remain in effect for as long as the property qualified as marginal.

Public Comments. One State opposed continuous relief throughout the life of a lease and thought the marginal properties should be monitored periodically. One industry association supported relief for the life of the lease.

RPC Subcommittee Recommendation. The subcommittee did not recommend any changes in § 204.217 (redesignated as § 205.209).

MMS Response. We agree that properties should have relief for the life of the lease only if they continue to qualify as marginal. Moreover, nothing in this proposed rulemaking precludes MMS from monitoring and auditing leases for compliance with other MMS regulations and lease terms.

Relationship to Other Incentive Programs

1999 Proposed Rule. In § 204.218, MMS proposed that a lessee could obtain accounting and auditing relief for a marginal property even if the property benefited from other Federal or State production incentive programs.

Public Comments. One State commented that lessees should be required to disclose other types of relief they are receiving. One industry association supported the provision allowing lessees to get marginal property relief even if they benefit from other incentive programs.

RPC Subcommittee Recommendation. The subcommittee did not recommend any changes in this provision.

MMS Response. We agree that lessees should get marginal property accounting and auditing relief even if they benefit from other relief programs. Nothing in RSFA precludes obtaining marginal property relief if a lessee obtains other relief.

Fees

1999 Proposed Rule. In § 210.210(b), MMS listed the information that lessees must submit in their requests for accounting and auditing relief and the requirement to submit a $50 fee with each request.

Public Comments. One State stated that the items to be included in the written request for relief were inadequate. Two States said the $50 fee is too low compared to the cost incurred by States and MMS to process requests. Two States thought the fees should be shared with the States. Both industry associations opposed the fee. One industry association said that small independent producers could not afford it and did not like the fact that MMS would not refund the fee for any reason.

RPC Subcommittee Recommendation. The subcommittee recommended elimination of the fee for request-based relief.

MMS Response. After further legal review, we have decided that it is reasonable not to recover a processing fee for requests or notices under this proposed rule. MMS recovers its costs under the Independent Offices Appropriations Act of 1952 (IOAA),[6] for Federal offshore leases, and the Federal Land Policy and Management Act of 1976(FLPMA),[7] for Federal onshore leases. Thus, as part of the previously-proposed rulemaking, we analyzed the proposed marginal property relief's cost recovery fees for reasonableness according to the factors in FLPMA section 304(b).[8] In that proposed rulemaking, we examined the ''reasonableness factors'' which FLPMA requires to be considered: (a) Actual costs (exclusive of management overhead); (b) the monetary value of the rights or privileges sought by the applicant; (c) the efficiency to the Government processing involved; (d) that portion of the cost incurred for the benefit of the general public interest rather than for the exclusive benefit of the applicant; (e) the public service provided; and (f) other factors relevant to determining the reasonableness of the costs.

For marginal property relief taken or requested under § 204.210, the method used to evaluate the factors under the previously-proposed rulemaking was twofold. First, we estimated actual costs and evaluated each of the remaining FLPMA reasonableness factors (b) through (f) individually to decide whether the factor might reasonably lead to an adjustment in actual costs. If so, that factor was then weighed against the remaining factors to determine whether another factor might reasonably increase, decrease, or eliminate any contemplated reduction. On the basis of that twofold analysis, although MMS's total estimated actual costs were $2,370 to process an average request, MMS determined that a fee of $50 to process relief requests was reasonable.

MMS determined a reduced fee was reasonable primarily based on its evaluation of FLPMA factor (f) Other Factors. MMS's primary consideration under this factor was RSFA's purpose with respect to marginal properties. Congress enacted RSFA to ''promote production,''[9] by ''encourag[ing] lessees to continue to produce and develop marginal properties.''[10] Congress stated that ''certain regulatory * * * obligations should be waived if it can be demonstrated such a waiver could aid in maintaining production that might otherwise be abandoned.''[11] However, RSFA also mandated that any relief should ''reduce administrative costs, and increase net receipts to the United States and the States.''[12] Congress stated that granting relief for marginal properties should ''result in additional receipts from oil and gas production that would otherwise be abandoned, and would * * * increase oil and gas production on Federal lands by creating economic efficiencies to make Federal leases more competitive with private leases.''[13] Thus, as part of its FLPMA reasonableness analysis, MMS considered (1) whether the benefit from the increase in royalties to be gained from continued production from marginal properties and the decreased administrative burden to MMS from granting such relief merited a reduction in fee charges; and (2) whether recovering the fee would defeat the Congressional intent to provide relief by discouraging companies from requesting relief.

MMS has reexamined the analysis under factor (f) in the previously-proposed rule to determine whether those factors warranted elimination of the proposed fee. We believe they do. We do not believe that the administrative savings to industry that may be afforded if they are granted relief will be significant enough for them to pay to request relief. Moreover, we believe that the companies that most need the relief are small independents who would be discouraged from applying for relief by even the nominal $50 fee previously proposed. Because the purpose of RSFA is to grant relief to producers so that they will continue to produce, we believe it is counterproductive to include a fee that will discourage many of the smaller marginal producers from requesting relief. Thus, we are not proposing to require payment of a processing fee for relief requests.

III. Procedural Matters

1. Public Comment Policy

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours and on our Internet site at www.mrm.mms.gov. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

2. Summary Cost and Benefit Data

We have summarized below the estimated costs and benefits of this proposed rule to all potentially-affected groups: industry, State and local governments, and the Federal Government. Indian tribes and allottees are not affected by this rule. The cost and benefit information in this Item 2 of Procedural Matters is used as the basis for the Departmental certifications in Items 3 through 11 below.

A. Industry

(1) *Cost—Notification-based relief—Submitting notifications.* Approximately 3,000 Federal oil and gas properties produce 1,000 or less BOE annually. In the first year after this rule becomes effective, we estimate that lessees of 1,000 of these properties will submit notifications that they will take cumulative reporting and payment relief. We do not anticipate that all lessees of qualifying properties will submit notifications because not all States will allow reporting and payment relief, and large corporations may find that modifying their computer systems to report and pay on a few leases annually rather than monthly will not be cost effective.

We further estimate that a lessee will require 2 hours to determine if a property qualifies for cumulative reporting and payment relief and then prepare and submit the notification to MMS. Consequently, the total estimated burden for all notifications in the first year is 2,000 hours (1,000 properties × 2 hours). Using an estimated $50 per hour cost, the total cost for all lessees to submit these notifications is $100,000 (2,000 burden hours × $50).

Because the reporting and payment relief for a qualified property is for the life of the property as long as the property produces less than 1,000 BOE per year, a notification need only be

[6] 31 U.S.C. 9701 *et seq.*

[7] 43 U.S.C. 1701.

[8] 64 FR 3366–69.

[9] RSFA section 7(a).

[10] S. Rep. 260, 104th Cong., 2d Sess. 20 (1996); H.R. 667, 104th Cong., 2d Sess. 20 (1996).

[11] H.R. 667, 104th Cong., 2d Sess. 20 (1996).

[12] RSFA section 7(a).

[13] *Id.* at 20–21.

filed one time. However, we estimate that MMS will receive notifications for approximately 100 newly-qualifying properties in each subsequent year. The total estimated burden for each subsequent year is 200 hours (100 properties × 2 hours) for a total cost of $10,000 (200 hours × $50).

(2) *Benefit—Notification-based relief—Reporting fewer lines.* We estimate that an average of 1,000 properties (500 leases and 500 Agreements) will involve cumulative reporting and payment relief annually. This means that royalties on these properties will be reported and paid annually rather than monthly. We further estimate that lessees will submit 5,500 fewer lines for leases (1 line per month × 11 months × 500 leases) and 16,500 fewer lines for Agreements (3 lines per month × 11 months × 500 Agreements) on Form MMS–2014, each year for a total of 22,000 fewer lines per year. Because each line averages 3 minutes to submit, we estimate that lessees will save 1,100 burden hours (22,000 lines × 3 minutes ÷ 60 minutes/hour) or a total of $55,000 (1,100 hours × $50/hour) in the first year this rule is effective and for each year thereafter.

(3) *Cost—Request-based relief—Requesting approval.* MMS expects approximately 10 requests per year for other accounting and auditing relief. We estimate each request will require 4 hours for a lessee to prepare and submit. This estimate also includes providing information originally omitted from the request and lessee approval of MMS modifications, if any. The estimated cost to lessees to request other relief is approximately $2,000 per year (10 requests × 4 hours per request × $50 per hour).

(4) *Benefit—Request-based relief—Taking request-based relief.* We are unable to quantify the benefits of the request-based relief category at this time because we do not know what types of relief industry will request or how many MMS will approve.

(5) *Cost—Both types of relief—Notifying MMS that relief has ceased.* When a property ceases to qualify for previously granted relief, the lessee or designee is required to notify MMS. MMS expects that 24 properties will cease to qualify for relief each year and that each notification will require ¼ hour to prepare and submit. The estimated cost to lessees for these notifications is approximately $300 (24 properties × .25 hours × $50).

Small Business Issues. Approximately 2,500 companies report and pay royalties to MMS. We estimate that over 97 percent of these companies are small businesses as defined by the U.S. Small Business Administration because they have 500 or fewer employees. We anticipate that most of the relief granted under this proposed rule will benefit small companies. Typically, as properties near the end of their productive life, larger companies with higher overhead, sell their marginal properties to small companies who can operate them more profitably. We expect most small companies will avail themselves of the cumulative reporting and payment relief option. Generally, larger companies may not use this option because of the expense of modifying their large, complex computer systems to report a few leases on an annual rather than a monthly basis. However, we expect that most request-based relief will be sought by larger companies having more sophisticated and complex accounting considerations. If any company, large or small, chooses not to take the accounting and auditing relief offered in this proposed rule, it will incur no additional expense or burden.

B. State and Local Governments

This rule will not impose any additional burden on local governments. MMS estimates that States impacted by this rule would incur costs and benefits as calculated below:

(1) *Cost—Notification-based relief—Determining State participation.* Burden hours for review and development of a blanket State policy on accounting and auditing relief is estimated to be 40 hours at the beginning of each year. Only 4 States have sufficient numbers of marginal properties to require an in-depth analysis of the economic impact of offering accounting and auditing relief. Consequently, we estimate the total annual burden to establish blanket policies for all States to be approximately 160 hours (4 primary States × 40 hours) or a total cost of $8,000 (160 hours × $50).

(2) *Cost—Request-based relief—Consulting with MMS.* Consultation with MMS on individual requests for other accounting and auditing relief is estimated to be 4 hours per property. As noted previously, MMS expects approximately 10 requests for individual accounting and auditing relief each year for a total burden of 40 hours for all States (10 requests × 4 hours per request) or a total cost of $2,000 (40 hours × $50).

(3) *Benefit—Notification-based relief—Prolonging life of marginal wells.* As discussed in item 2.A., we estimate that after the first year, cumulative reporting will save industry approximately $45,000 annually ($55,000–$10,000). We believe this reduced cost of operations will prolong the life of marginal wells. If the reporting relief encourages industry to continue to produce oil and gas from marginal properties, States will benefit in the additional receipts. The States generally would receive 50 percent of the royalties collected on additional production plus additional severance and ad valorem taxes. The States also would benefit from continued employment and economic activity resulting from production that would otherwise be abandoned. We cannot determine the length and dollar benefit of this additional well life at this time. However, we believe that if States choose to participate in this reporting relief, the net benefits to the States will be positive.

(4) *Cost—Notification-based relief—Lost time value of money.* Because payments would be made annually rather than monthly, States will lose the time value of money on sales made in the 11 months before the royalty payment is due. Generally, States receive 50 percent of the royalties collected for onshore leases.

For example, New Mexico has the largest number of properties qualifying for cumulative reporting and payment relief—approximately 1,280. Using a value of $21 per barrel of oil and $2.20 per Mcf of gas and a 7 percent interest rate, we estimate that if all 1,280 qualifying properties take cumulative reporting and payment relief, New Mexico would lose a maximum of $14,000 annually in the time value of money. The calculation for New Mexico marginal properties producing 1,000 BOE per year or less is as follows:

Action	Gas (Mcf)	Oil (bbl)	Total
Total qualifying volume	1,741,829	154,101	
Multiplied by estimated unit value	× $2.20	× $21.00	
Total estimated value	$3,832,023	$3,236,121	$7,068,144
Multiplied by royalty rate [1]			× .125
Total royalty due for year			$ 883,518

Action	Gas (Mcf)	Oil (bbl)	Total
Divided by 12 months [2]			÷12
Average royalty due per month			$ 73,626
Multiplied by est. interest rate			× .07
Interest on 1 mo. royalty for 1 yr.			5,153
Multiplied by 66/12 [3]			× 66/12
Interest (time value) lost for yr. [4]			28,341

[1] The royalty rate for Federal onshore leases is most often 12½ percent. However, many of these marginal properties may also qualify for lower royalty rates under the stripper oil royalty rate reduction program (30 CFR 216.57). Consequently, the royalty value in this calculation could be less.

[2] To simplify this calculation, we divided the total royalty due for the year by 12 months on the assumption that the royalties would be evenly produced throughout the year.

[3] This factor reflects the fact that different amounts of interest would accrue for each production month, beginning with 11/12 of 7 percent for the first month; 10/12 of 7 percent for the second month; 9/12 of 7 percent for the third month, etc. for a total of 66/12.

[4] The New Mexico State share is 50 percent; the Federal share is 50 percent. We rounded each share to $14,000.

As noted above, we calculated the time value of money lost for qualifying properties in New Mexico to be approximately $28,000 annually (the New Mexico share is $14,000 and the Federal government's share is $14,000). Because New Mexico has 43 percent of all marginal properties producing 1,000 BOE or less per year, we extrapolated the total loss for qualifying properties in all States to be $65,000 annually ($28,000 ÷. 43 = $65,000). The share of the lost time value of money for all States would be $32,500 and the Federal government's share would be $32,500.

C. Federal Government

(1) *Benefit—Notification-based relief—Processing fewer lines.* As noted in item 2.A.(2) above, lessees will report—and MMS will process—approximately 22,000 fewer lines under the cumulative reporting and payment relief option. We estimate that MMS will save approximately $8,360 per year (22,000 lines X $.38 processing cost per line). We determined the cost per line using cost data from OMB Control Number 1010–0140 ($958,229 cost to MMS to process lines received from industry on the Form MMS–2014 divided by 2,496,000 expected lines per year).

(2) *Cost—Notification-based relief—Processing notifications.* In the first year, MMS expects to receive 1,000 notifications from lessees who wish to report annually on their marginal properties. We estimate that recording each notification in MMS's automated records will require 5 minutes per notice. Total time to record the notifications is 83 hours (1,000 notices X 5 minutes/notice 60 minutes/hour). Using an average cost of $50 per hour, the total cost to the Government is estimated to be $4,150.

In the second year and each year thereafter, MMS expects to receive only 100 notifications. Total time to record the notifications is 8 hours (100 notices X 5 minutes/notice 60 minutes/hour) or a total cost of $400 (8 hours X $50/hour).

(3) *Cost—Request-based relief—Evaluating requests for other relief.* As noted in item 2.A.(3) above, MMS expects to receive 10 individual accounting and auditing relief requests from lessees annually. We estimate that each request will require 40 hours to analyze for a total cost of $20,000 (10 requests X 40 hours per request X $50 per hour).

(4) *Benefit—Notification-based relief—Prolonging life of marginal wells.* As discussed in item 2.A. above, we estimate that after the first year cumulative reporting will save industry approximately $45,000 annually ($55,000—$10,000). We believe this reduced cost of operations will prolong the life of marginal wells. We cannot determine the length and dollar benefit of this additional well life at this time. The Federal government would generally receive 50 percent of the royalties collected on additional production. We believe the net benefit to the Federal government will be positive.

(5) *Cost—Notification-based relief—Lost time value of money.* The Federal government will lose the time value of money on sales made in the 11 months before the royalty payment is due. Generally, the Federal government receives 50 percent of the royalties collected for onshore leases. We believe the amount lost to the Federal government for the time value of money would be the same as for all States or $32,500 annually (see item B.4. above for the calculation).

D. Summary of Costs and Benefits

Description	Benefit / <COST>	
	First Year	Subsequent Years
A. Industry		
(1)<Cost>—Notification-based relief—Submitting notifications	$<100,000>	$<10,000>
(2) Benefit—Notification-based relief— Reporting fewer lines	55,000	55,000
(3) Cost—Request-based relief—Requesting approval	<2,000>	<2,000>
(4) Benefit—Request-based relief—Taking request-based relief and prolonging the life of marginal wells	Unknown	Unknown
(5) Cost—Both types of relief—Notifying MMS that relief has ceased	<300>	<300>
B. State and Local Governments		
(1) Cost—Notification-based relief—Determining State participation	<8,000>	<8,000>
(2) Cost—Request-based relief—Consulting with MMS	<2,000>	<2,000>
(3) Benefit—Notification-based relief—Prolonging life of marginal wells	Unknown	Unknown
(4) Cost—Notification- based relief—Lost time value of money	<32,500>	<32,500>

Description	Benefit / <COST>	
	First Year	Subsequent Years
C. Federal Government		
(1) Benefit—Notification-based relief—Processing fewer lines	8,360	8,360
(2) Cost—Notification-based relief—Processing notifications	<4,150>	<400>
(3) Cost—Request-based relief—Evaluating requests for relief	<20,000>	<20,000>
(4) Benefit—Notification based relief—Prolonging the life of marginal wells	Unknown	Unknown
(5) Cost—Notification-based relief—Lost time value of money	<32,500>	<32,500>

3. Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This proposed rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This proposed rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This proposed rule will not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This proposed rule does not raise novel legal or policy issues.

4. The Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). See the discussion of small business effects in Item 2.A. above.

Your comments are important. The Small Business and Agricultural Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions in this rule, call 1–888–734–3247. You may comment to the Small Business Administration without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the Department of the Interior.

5. Small Business Regulatory Enforcement Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Will not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

6. Unfunded Mandates Reform Act

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule will not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

7. Takings (Executive Order 12630)

In accordance with Executive Order 12630, this proposed rule does not have significant takings implications. This rule does not impose conditions or limitations on the use of any private property; consequently, a takings implication assessment is not required.

8. Federalism (Executive Order 13132)

In accordance with Executive Order 13132, this proposed rule does not have Federalism implications. This rule does not substantially or directly affect the relationship between Federal and State governments or impose costs on States or localities.

9. Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this proposed rule will not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order.

10. Paperwork Reduction Act of 1995

This proposed rule contains new information collection requirements that we have submitted to the Office of Management and Budget (OMB) for review and approval under section 3507(d) of the Paperwork Reduction Act of 1995. As part of our continuing effort to reduce paperwork and respondent burden, we invite the public and other Federal agencies to comment on any aspect of the reporting burden.

Submit your comments to the Office of Information and Regulatory Affairs, OMB, Attention Desk Officer for the Department of the Interior (OMB Control Number 1010–NEW), 725 17th Street, Washington, DC 20503.

Send copies of your comments to Paul A. Knueven, Chief, Regulations and FOIA Team, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, the MMS courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also e-mail your comments to us at *mrm.comments@mms.gov*. Include the title of the information collection and the OMB Control number in the ''Attention'' line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your e-mail, contact Mr. Knueven at (303) 231–3316.

OMB has up to 60 days to approve or disapprove this collection of information but may respond after 30 days. Therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration. However, we will consider all comments received during the comment period for this notice of proposed rulemaking.

Information Collection Burden. The annual reporting burden for this information collection in the first year after this rule is effective is 2,206 hours.

We expect approximately 1,034 responses from 1,010 Federal lessees or designees and approximately 4 responses from 4 States annually. The table below shows the breakdown of burden in the first year by proposed CFR section and paragraph:

30 CFR section	Reporting requirement	Burden hours per response	Annual number of responses	Annual burden hours
204.202(b); 204.205(a)	You must notify MMS under § 204.205(a) before taking [cumulative reporting] relief under this option * * * To take accounting relief under § 204.202, you must notify MMS in writing * * *.	2	1,000	2,000
204.202(c), (e), (f), (g); 204.210(c).	Submit your royalty report and payment * * * by the end of February * * * Submit your royalty report and payment by the end of March if you have an estimate on file * * * Report one line of cumulative royalty information on the Report of Sales and Royalty Remittance, Form MMS–2014 * * * If you take relief you are not qualified for, you must * * * amend your Form MMS–2014 * * * You must report allowances on Form MMS–2014 on the same annual basis as the royalties for your marginal property * * * You must report and pay royalties for the portion of the calendar year * * * by the end of the month after you dispose of the marginal property * * * You must adjust your royalty payments if they are affected by any required BLM or OMM reallocation under the nonqualifying Agreement.	Burden covered under OMB Control Number 1010–0140		
204.203(b); 204.205(b)(1); 204.206(a)(3), (b).	You must request approval from MMS under § 204.205(b) before taking relief under this [other relief] option * * * To obtain [other] accounting or auditing relief under § 204.203, you must file a written request * * * You have 60 days from your receipt of MMS's notice to either accept or reject any modifications in writing * * * If your request for relief is not complete * * * you must submit the missing information within 60 days * * * You may submit a new request for relief * * * at any time after MMS returns your incomplete request.	4	10	40
204.208(c), (d)	* * * The State must notify the Associate Director for [MRM], in writing of its intent to allow or disallow one or both of the relief options * * * [and] specify in its notice of intent * * * which relief options it will allow or disallow * * * If it so decides * * * that it will allow one or both of the relief options previously denied * * * the State must notify the Associate Director * * * in writing * * * its intent to allow one or both of the relief options * * * [and] specify in its notice of intent * * * which relief options it will allow..	40	4	160
204.209(b)	You must notify MMS in writing by December 31 that the relief for your property has terminated.	.25	24	6
Total			1,038	2,206

As noted in the table above, the total burden hours for this information collection is 2,206 hours in the first year. Using an average cost of $50 per hour, the total cost to respondents is $110,300.

In the second year after this rule is effective and each year thereafter, the annual burden for this information collection will be substantially reduced to 406 hours and a total cost of $20,300 (406 hours × $50/hour). Because the reporting and payment relief for a qualified property is for the life of the property as long as the property produces less than 1,000 BOE per year, a notification under §§ 204.202(b) and 204.205(a) need only be filed one time. Consequently, we expect only 100 notifications for newly-qualifying properties in each subsequent year. The total estimated burden for notifications will decrease from 2,000 hours (1,000 responses × 2 hours) to 200 hours (100 responses × 2 hours) for a total decrease of 1,800 hours. MMS will notify OMB of this burden adjustment at the appropriate time. There are no additional recordkeeping costs associated with this information collection.

Effects on OMB Control Number 1010–0140, Report of Sales and Royalty Remittance, Form MMS–2014. We estimate that as a result of cumulative reporting, lessees will submit, and MMS will receive, a total of 22,000 fewer lines on Forms MMS–2014 each year. However, because this rule potentially impacts less than 0.9 percent of the total expected lines (22,000 lines ÷ 2,496,000 lines = .0088) each year, we are not revising our burden estimates for OMB Control Number 1010–0140 at this time. Our burden estimates for Form MMS–2014 are based on a combination of historical information and informed but subjective judgments about future occurrences. Thus, our estimates are not sufficiently precise to project a measurable difference in burden for a potential minor decrease in reported lines.

Public Comment Policy. The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Before submitting an ICR to OMB, PRA Section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is

necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting ''non-hour cost'' burden to respondents or recordkeepers resulting from the collection of information. We have not identified non-hour cost burdens for this information collection. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this proposed information collection and address them in our final rule. We will provide a copy of the ICR to you without charge upon request and the ICR will also be posted on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.*

We will post all comments in response to this proposed information collection on our Web site at *http://www.mrm.mms.gov/Laws_R_D/InfoColl/InfoColCom.htm.* We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

11. National Environmental Policy Act

This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required.

12. Clarity of this Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, *etc.*) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§ '' and a numbered heading; for example, § 204.200 What is the purpose of this part?) (5) Is the description of the rule in the ''Supplementary Information'' section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov.*

13. Energy Supply, Distribution, or Use (Executive Order 13211)

This rule is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866. The primary purpose of this rule is to provide accounting and auditing relief to certain lessees of Federal oil and gas properties, largely in the form of reduced records submittal requirements. This rule does not have a significant effect on energy supply, distribution, or use because while it should promote some additional production on a subset of Federal oil and gas leases, the additional production would not be significant in comparison to total production from Federal oil and gas leases.

List of Subjects in 30 CFR Part 204

Continental shelf, Government contracts, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: February 19, 2003.

Rebecca W. Watson,

Assistant Secretary for Land and Minerals Management.

For reasons set out in the preamble, 30 CFR part 204 is proposed to be added as follows:

PART 204—ALTERNATIVES FOR MARGINAL PROPERTIES

Subpart A—General Provisions

Sec.
204.1 What is the purpose of this part?
204.2 What definitions apply to this part?
204.3 What alternatives are available for marginal properties?
204.4 What is a marginal property under this part?
204.5 What statutory requirements must I meet to obtain royalty prepayment or accounting and auditing relief?
204.6 May I appeal if MMS denies my request for prepayment or accounting and auditing relief?

Subpart B—Prepayment of Royalty [Reserved]

Subpart C—Accounting and Auditing Relief

204.200 What is the purpose of this subpart?
204.201 Who may obtain accounting and auditing relief?
204.202 What is the cumulative royalty reports and payments relief option?
204.203 What is the other relief option?
204.204 What accounting and auditing relief will MMS not allow?
204.205 How do I obtain accounting and auditing relief?
204.206 What will MMS do when it receives my request for accounting and auditing relief?
206.207 Who will approve, deny, or modify my request for accounting and auditing relief?
204.208 May a State decide that it will or will not allow one or both of the relief options under this subpart?
204.209 What if my property ceases to qualify for relief obtained under this subpart?
204.210 What if BLM approves my property as part of a nonqualifying agreement?
204.211 When may MMS retroactively rescind relief for a property?

204.212 What if I took relief for which I was ineligible?
204.213 May I obtain relief for a property that benefits from other Federal or State incentive programs?
204.214 Are the information collection requirements in this subpart approved by the Office of Management and Budget?

Authority: 30 U.S.C. 1701 *et seq.*

Subpart A—General Provisions

§ 204.1 What is the purpose of this part?

This part explains how you as a lessee or lessee's designee of a Federal onshore or Outer Continental Shelf (OCS) oil and gas lease may obtain prepayment or accounting and auditing relief for certain marginal properties.

§ 204.2 What definitions apply to this part?

Agreement means a federally approved communitization Agreement or unit participating area.

Barrels of oil equivalent (BOE) means the combined equivalent production of oil and gas stated in barrels of oil. Each barrel of oil production is equal to one BOE. Also, each 6,000 cubic feet of gas production is equal to one BOE.

Base period means the 12-month period from July 1 through June 30 immediately preceding the calendar year in which you take or request marginal property relief. For example, if you request relief in January 2006, your base period will be July 1, 2004 through June 30, 2005.

Combined equivalent production means the total of all oil and gas production for the marginal property, stated in BOE.

Designee means the person designated by a lessee under § 218.52 of this chapter to make all or part of the royalty or other payments due on a lease on the lessee's behalf.

Producing wells means only those producing oil or gas wells that contribute to the sum of BOE used in the calculation under § 204.4(c). Producing wells do not include injection or water wells.

State concerned (State) means the State that receives a statutorily-prescribed portion of the royalties from a Federal onshore or OCS lease.

§ 204.3 What alternatives are available for marginal properties?

If you have production from a marginal property, MMS and the State may allow you the following options:

(a) *Prepay royalty.* MMS and the State may allow you to make a lump-sum advance payment of royalties instead of monthly royalty payments for the remainder of the lease term.

(b) *Take accounting and auditing relief.* MMS and the State may allow various accounting and auditing relief options to encourage you to continue to produce and develop your marginal property. See subpart C for accounting and auditing relief requirements.

§ 204.4 What is a marginal property under this part?

To qualify as a marginal property eligible for royalty prepayment or accounting and auditing relief under this part, your property must meet the following requirements:

(a) Production must be from, or attributable to, a Federal onshore or OCS lease or Agreement. Indian leases are not eligible for the marginal property alternatives under this part, even though production from a qualifying marginal property may be attributable to an Indian lease. You must also meet the criteria shown in the following table:

If your lease is * * *	Then * * *	And * * *
(1) Not in an Agreement	The entire lease must qualify as a marginal property under paragraph (b) of this section..	
(2) Entirely or partly committed to one Agreement.	The entire Agreement must qualify as a marginal property under paragraph (b) of this section.	Agreement production allocable to your lease may be eligible for relief under this part. Any production from your lease that is not committed to the Agreement also may be eligible for separate relief under (a)(4) of this table.
(3) Entirely or partly committed to more than one Agreement.	The Agreement must qualify separately as a marginal property under paragraph (b) of this section.	Only the qualifying Agreement's production allocable to your lease may be eligible for separate relief under this part.
(4) Partly committed to an Agreement and you have production from the part of the lease that is not committed to the Agreement.	The part of the lease that is not committed to the Agreement must qualify separately as a marginal property under paragraph (b) of this section..	

(b) To qualify as a marginal property for a calendar year, the combined equivalent production of the property during the base period must equal an average daily well production of less than 15 barrels of oil equivalent (BOE) per well per day calculated under paragraph (c) of this section.

(c) To determine the average daily well production on or attributable to your property, divide the sum of the BOE for all producing wells on the property by the sum of the number of days that each of those wells actually produced during the base period. If your property is in an Agreement, your calculation under this section must include all wells included in the Agreement, even if they are not on a Federal onshore or OCS lease.

§ 204.5 What statutory requirements must I meet to obtain royalty prepayment or accounting and auditing relief?

(a) MMS and the State may allow royalty prepayment or accounting and auditing relief for your marginal property if MMS and the State jointly determine that the prepayment or relief is in the best interests of the Federal Government and the State to:

(1) Promote production;

(2) Reduce the administrative costs of MMS and the State; and

(3) Increase net receipts to the Federal Government and the State.

(b) MMS and the State may discontinue any prepayment or accounting and auditing relief options granted for your marginal property if MMS and the State jointly determine that the prepayment or relief no longer meets the criteria in paragraph (a) of this section.

§ 204.6 May I appeal if MMS denies my request for prepayment or accounting and auditing relief?

If MMS denies your request for prepayment or accounting and auditing relief under this part, you may appeal under part 290 of this chapter.

Subpart B—Prepayment of Royalty [Reserved]

Subpart C—Accounting and Auditing Relief

§ 204.200 What is the purpose of this subpart?

This subpart explains how you as a lessee or lessee's designee may obtain accounting and auditing relief for production from a marginal property. The two types of relief that you can receive under this subpart are cumulative reports and payment relief (explained in § 204.202) and other accounting and auditing relief appropriate for your property (explained in § 204.203).

§ 204.201 Who may obtain accounting and auditing relief?

(a) You may obtain accounting and auditing relief under this subpart:

(1) If you are a lessee or its designee for a Federal lease with production from a property that qualifies as a marginal property under § 204.4;

(2) If you meet any additional requirements for specific types of relief under this subpart; and

(3) Only for your fractional interest in the marginal property.

(b) You may not obtain one or both of the relief options specified in this subpart on any portion of a property if:

(1) The property covers multiple States; and

(2) One of the States determines under § 204.208 that it will not allow one or both of the relief options.

§ 204.202 What is the cumulative royalty reports and payments relief option?

(a) The cumulative royalty reports and payments relief option allows you to submit royalty reports and payments annually for the calendar year. You are eligible for this option only if the total volume produced from the marginal property is 1,000 BOE or less during the base period.

(b) You must notify MMS under § 204.205(a) before taking relief under this option.

(c) To use the cumulative royalty reports and payments relief option, you must do all of the following.

(1) Submit your royalty report and payment in accordance with § 218.51(g) of this chapter if you do not have an estimated payment on file for gas under 30 CFR 218.150(b). You must make this submission by the end of February of the year following the calendar year for which you are reporting annually.

(2) Submit your royalty report and payment by the end of March of the year following the year for which you are reporting annually if you have an estimate on file.

(3) Use as the sales month the month before the month that you will report and pay under this paragraph (c) to report royalty information for the entire calendar year. (For example, if you report and pay by the end of February, use January as the sales month.)

(4) Report one line of cumulative royalty information on the Report of Sales and Royalty Remittance, Form MMS–2014, for the calendar year, the same as if it were a monthly report.

(d) If you do not pay your royalty by the date due in paragraph (c) of this section, you will owe late payment interest determined under part 218 of this chapter from the date your payment was due under this section until the date MMS receives it.

(e) If you take relief you are not qualified for, you must:

(1) Pay MMS late payment interest determined under part 218 of this chapter from the date your payment was due until the date MMS receives it; and

(2) Amend your Form MMS–2014 to reflect the required monthly reporting.

(f) You must report allowances on Form MMS–2014 on the same annual basis as the royalties for your marginal property.

(g) If you dispose of a marginal property for which you have taken relief under this section, you must:

(1) Report and pay royalties for the portion of the calendar year for which you had an ownership interest; and

(2) Make the report and payment by the end of the month after you dispose of the marginal property.

§ 204.203 What is the other relief option?

(a) Under this relief option, you may request any type of accounting and auditing relief that is appropriate for your marginal property, provided it is not prohibited under § 204.204 and meets the statutory requirements of § 204.5. Examples of relief options you could request are:

(1) To report and pay royalties using a valuation method other than that required under part 206 of this chapter that approximates royalties payable under part 206 of this chapter; and

(2) To reduce your royalty audit burden. However, MMS will not consider any request that eliminates MMS's or the State's right to audit.

(b) You must request approval from MMS under § 204.205(b) before taking relief under this option.

§ 204.204 What accounting and auditing relief will MMS not allow?

MMS will not approve your request for accounting and auditing relief under this subpart if your request:

(a) Prohibits MMS or the State from conducting any form of audit;

(b) Permanently relieves you from making future royalty reports or payments;

(c) Provides for less frequent royalty reports and payments than annually;

(d) Provides for you to submit royalty reports and payments at separate times;

(e) Impairs MMS's ability to properly or efficiently account for or distribute royalties;

(f) Requests relief for a lease under which the Federal Government takes its royalties in-kind;

(g) Alters production reporting requirements;

(h) Alters lease operation or safety requirements;

(i) Conflicts with rent, minimum royalty, or lease requirements; or

(j) Requests relief for a marginal property located in a State that has determined in advance that it will not allow such relief under § 204.208.

§ 204.205 How do I obtain accounting and auditing relief?

(a) To take accounting relief under § 204.202, you must notify MMS in writing by January 31 of the calendar year for which you begin taking your relief.

(1) Your notification must contain:

(i) Your company name, MMS-assigned payor code, address, phone number, and contact name; and

(ii) The specific MMS lease number and Agreement number, if applicable.

(2) You may file a single notification for multiple marginal properties.

(b) To obtain accounting or auditing relief under § 204.203, you must file a written request for relief with MMS.

(1) Your request must contain:

(i) Your company name, MMS-assigned payor code, address, phone number, and contact name;

(ii) The MMS lease number and Agreement number, if applicable; and

(iii) A complete and detailed description of the specific accounting or auditing relief you seek.

(2) You may file a single request for multiple marginal properties if you are requesting the same relief for all properties.

§ 204.206 What will MMS do when it receives my request for accounting and auditing relief?

When MMS receives your request for accounting and auditing relief under § 204.205(b), it will notify you in writing as follows:

(a) If your request for relief is complete, MMS may either approve, deny, or modify your request in writing.

(1) If MMS approves your request for relief, MMS will notify you of the

effective date of your accounting or auditing relief and other specifics of the relief approved.

(2) If MMS denies your relief request, MMS will notify you of the reasons for denial and your appeal rights under § 204.6.

(3) If MMS modifies your relief request, MMS will notify you of the modifications.

(i) You have 60 days from your receipt of MMS's notice to either accept or reject any modification(s) in writing.

(ii) If you reject the modification(s) or fail to respond to MMS's notice, MMS will deny your relief request. MMS will notify you in writing of the reasons for denial and your appeal rights under § 204.6.

(b) If your request for relief is not complete, MMS will notify you in writing that your request is incomplete and identify any missing information.

(1) You must submit the missing information within 60 days of your receipt of MMS's notice that your request is incomplete.

(2) If you submit all required information, MMS and the State may approve, deny, or modify your request for relief. You may submit a new request for relief under this subpart at any time after MMS returns your incomplete request.

(3) If you do not submit all required information within 60 days of your receipt of MMS's notice that your request is incomplete, MMS will deny your relief request. MMS will notify you in writing of the reasons for denial and your appeal rights under § 204.6.

(c) [*The regulatory text in this paragraph concerning the time period, if any, within which MMS must either deny or approve your request will be determined after due consideration of public comments. See section II of the preamble titled "Comments on the 1999 Proposed Rule, Alternate Valuation Relief Option."*]

§ 204.207 Who will approve, deny, or modify my request for accounting and auditing relief?

(a) If there is not a State concerned for your marginal property, only MMS will decide whether to approve, deny, or modify your relief request.

(b) If there is a State concerned for your marginal property that has determined in advance that it may allow either or both of the relief options under this subpart, MMS will decide whether to approve, deny, or modify your relief request after consulting with the State concerned.

§ 204.208 May a State decide that it will or will not allow one or both of the relief options under this subpart?

(a) A State may decide in advance that it will or will not allow one or both of the relief options specified in this subpart for a particular calendar year.

(b) To help States decide whether to allow one or both of the relief options specified in this subpart, MMS will send States a Report of Marginal Properties by September 30 of the preceding calendar year.

(c) If a State decides under paragraph (a) of this section that it will or will not allow one or both of the relief options in this subpart, within 30 days of the State's receipt of the Report of Marginal Properties under paragraph (b) of this section, the State must:

(1) Notify the Associate Director for Minerals Revenue Management, MMS, in writing, of its intent to allow or not allow one or both of the relief options under this subpart; and

(2) Specify in its notice of intent to MMS which relief option(s) it will allow or not allow.

(d) If a State decides in advance under paragraph (a) of this section that it will not allow one or both of the relief options specified in this subpart, it may decide for subsequent calendar years that it will allow one or both of the relief options in this subpart. If it so decides, within 30 days of the State's receipt of the Report of Marginal Properties under paragraph (b) of this section, the State must:

(1) Notify the Associate Director for Minerals Revenue Management, MMS, in writing, of its intent to allow one or both of the relief options allowed under this subpart; and

(2) Specify in its notice of intent to MMS which relief option(s) it will allow.

(e) If a State does not notify MMS under paragraphs (c) or (d) of this section, the State will be deemed to have decided not to allow either of the relief options under this subpart.

(f) MMS will publish a notice of the State's intent to allow or not allow certain relief options under this section in the **Federal Register** no later than 30 days before the beginning of the applicable calendar year.

§ 204.209 What if my property ceases to qualify for relief obtained under this subpart?

(a) Your property must qualify for relief under this subpart for each calendar year based on production during the base period for that calendar year. The notice or request you provided to MMS under § 204.205 for the first calendar year that your property qualified for relief remains effective for successive calendar years if you continue to qualify.

(b) If your property is no longer eligible for relief for any reason during a calendar year other than the reason under § 204.210 or paragraph (c) of this section, the relief for your property terminates as of December 31 of that calendar year. You must notify MMS in writing by December 31 that the relief for your property has terminated.

(c) If you dispose of your property during the calendar year, your relief terminates as of the end of the sales month in which you disposed of the property.

§ 204.210 What if BLM approves my property as part of a nonqualifying Agreement?

If the Bureau of Land Management (BLM) or MMS's Offshore Minerals Management (OMM) retroactively approves your marginal property as part of a nonqualifying Agreement, the property no longer qualifies for relief under this subpart. In that case:

(a) MMS will not retroactively rescind the marginal property relief for your property under § 204.211;

(b) Your marginal property relief terminates as of December 31 of the calendar year that you receive the BLM or OMM approval of your marginal property as part of a nonqualifying Agreement; and

(c) You must adjust your royalty payments if they are affected by any required BLM or OMM reallocation under the nonqualifying Agreement.

§ 204.211 When may MMS retroactively rescind relief for a property?

MMS may retroactively rescind the relief for your property if MMS determines that your property was not eligible for the relief obtained under this subpart because:

(a) You did not submit a notice or request for relief under § 204.205;

(b) You submitted erroneous information in the notice or request for relief you provided to MMS under § 204.205 or in your royalty or production reports; or

(c) Your property is no longer eligible for relief because production increased, but you failed to provide the notice required under § 204.209(b).

§ 204.212 What if I took relief for which I was ineligible?

If you took relief under this subpart for a period for which you were not eligible, you may owe additional royalties and late payment interest determined under part 218 of this chapter from the date your additional

payments were due until the date MMS receives them.

§ 204.213 May I obtain relief for a property that benefits from other Federal or State incentive programs?

You may obtain accounting and auditing relief for your marginal property under this subpart even if the property benefits from other Federal or State production incentive programs.

§ 204.214 Are the information collection requirements in this subpart approved by the Office of Management and Budget?

The information collection requirements contained in this subpart have been approved by OMB under 44 U.S.C. 3501 *et seq.* and assigned OMB control number 1010–____. See part 210 of this chapter for details concerning your estimated reporting burden and how you may comment on the accuracy of the burden estimate.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 800

[Docket No. 03N–0056]

Medical Devices; Patient Examination and Surgeons' Gloves; Test Procedures and Acceptance Criteria

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the sampling plans, test method, and acceptable quality levels (AQLs) for medical gloves contained in its medical device regulations. As prescribed by its regulation, FDA samples patient examination and surgeons' gloves and examines them for visual defects and water leaks. Glove lots are considered adulterated if they do not meet the specified quality levels. The objective of the proposed regulation is to improve the barrier quality of medical gloves on the U.S. market. The updated regulation would accomplish this by reducing the acceptable level of defects observed during FDA testing of medical gloves. By reducing the AQLs for medical gloves, FDA would also harmonize the level with consensus standards developed by the International Organization for Standardization (ISO) and the American Society for Testing Materials (ASTM).

DATES: Submit written or electronic comments by June 30, 2003. See section VII of this document for the proposed effective date of a final rule based on this proposal.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Casper E. Uldriks, Office of Compliance, Center for Devices and Radiological Health (HFZ–300), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4692.

SUPPLEMENTARY INFORMATION:

I. Background

With the advent of the human immunodeficiency virus (HIV) infections and the progression of infections into acquired immune deficiency syndrome (AIDS), scientists and medical and public health experts developed risk reduction strategies, including protective and preventive strategies for health care workers. These strategies were based on the etiology, and mechanisms and routes of transmission, of HIV infections.

A. Routes and Mechanisms of HIV Transmission

HIV is transmitted primarily through sexual contact. However, nonsexual transmission occurred in health care settings as a result of contact with infected blood. HIV was also isolated from other body fluids. The prevalence of HIV infections in health care settings and the risk of clinical transmission of other infections increased the importance of using effective procedures and barriers. The potential for infection heightened the importance of the quality of the barriers selected for protection.

B. The Need for Precautions in Health Care Settings

On August 21, 1987, the Centers For Disease Control (CDC) published a report emphasizing the need for all health care workers to routinely use appropriate universal precautions when they expect to come into contact with blood or other body fluids of any patient (Ref. 1). This report recommended that health care workers wear medical gloves when: (1) Touching blood or other body fluids, mucous membranes, or non-intact skin of patients; (2) handling items or surfaces soiled with blood or other bodily fluids; and (3) performing venipuncture and other vascular access procedures. The collective term, medical gloves, includes patient examination and surgeons' gloves (see 21 CFR 880.6250 and 878.4460).

C. The Need for Testing

After the publication of the CDC's recommendations, and the rise in HIV infections, health care workers increasingly relied on surgeons' gloves and patient examination gloves as a barrier to the transmission of HIV and other blood- and fluid-borne infectious agents. The CDC's recommendations clearly recognized that defects in medical gloves had the potential of resulting in transmission of HIV between patients and health care workers.

Consequently, FDA reviewed and evaluated the quality control procedures that manufacturers used in making medical gloves. FDA concluded that manufacturers could only meet reasonable expectations of barrier protection by establishing adequate specifications for medical gloves, and adequate test procedures to detect defects in gloves. Glove defects include rips, tears, embedded foreign objects in the glove that may cause the glove to rip or tear upon stretching, or holes that allow the passage of fluids and fluid-borne microorganisms. Each of these defects compromises the glove barrier integrity and may expose health care workers and patients to infectious agents. Articles written by health care professionals who studied glove quality and the use of gloves as a barrier to infectious agents noted that gloves with defects may not provide this protection (Refs. 2 through 6). In 1989, when FDA proposed § 800.20 (21 CFR 800.20), FDA's position was that existing consensus standards did not establish adequate test methods and acceptance criteria for patient examination or surgeons' gloves (54 FR 48218, November 21, 1989). Therefore, the agency concluded that it needed to communicate clearly the test procedures and the acceptance levels it would use to determine whether medical gloves were adulterated.

D. The Setting of Adulteration Levels

In the **Federal Register** of December 12, 1990 (55 FR 51254), FDA issued a final rule that identified minimum AQLs for both patient examination and surgeons' gloves, and established the sample plans and test method for determining whether a lot of gloves were acceptable. This rule defined defects as ''leaks, tears, mold, embedded foreign objects, etc.'' The definitions, sampling plans, test methods, and adulteration levels identified in the

1990 **Federal Register** are currently codified in title 21 of the Code of Federal Regulations in § 800.20.

II. Proposed Changes

A. Rationale and Summary of Changes

1. Continuing HIV/AIDS Incidence and Need for Protective Measures for Health Care Workers

In a May 1998 report, CDC reaffirmed its expectation that health care workers should use medical gloves as an effective barrier to HIV, hepatitis B virus, and other blood-borne infections, and that these gloves should provide effective protection against exposure to pathogenic microorganisms in blood and other body fluids (Ref. 7).

In the December 10, 1999, *Morbidity and Mortality Weekly Report* (MMWR), CDC estimated that the prevalence of HIV at the end of 1998 ranged from 800,000 to 900,000 infected persons. CDC estimated that, of these 800,000 to 900,000 persons, HIV infection or AIDS was diagnosed in approximately 625,000 of the individuals (Ref. 8). In a fact sheet posted on the Internet in June 1999, CDC reported that 54 documented cases of HIV seroconversion resulted from occupational exposure to HIV (Ref. 9). In April 2002, CDC reported that, as of December 31, 1999, 22,218 out of 437,407 adults reported diagnosed with AIDS were health care workers (Ref. 10). FDA concluded that medical gloves play an important role in the prevention of infectious disease transmission in health care settings, and that lowering the acceptable level of defects is necessary to further reduce the risk of transmission of such diseases and to harmonize the quality of gloves sold in the United States with international consensus standards.

2. Harmonization With Consensus Standards

Following the publication of § 800.20, several consensus standards organizations, such as the ISO and the ASTM, adopted the FDA test methodology and acceptance criteria for patient examination and surgeons' gloves. As glove manufacturing capabilities improved, these consensus standards organizations lowered the minimum acceptance criteria for holes/leaks for these gloves. In 1994, ISO published standards for surgeons' and patient examination gloves with AQLs of 1.5 and 2.5, respectively. ASTM adopted these same acceptance criteria in April 1998, and March 1999, for surgeons' and patient examination gloves, respectively. Because the standards organizations updated their standards to reflect the improvement in manufacturing technology, the consensus standards currently have lower AQLs for medical gloves than FDA's regulation (§ 800.20).

The consensus standards differ from the current FDA regulation in two other respects: (1) They use metric units for specifying dimensions, and (2) they refer to sampling plans from the ISO's document ISO 2859, ''Sampling Procedures for Inspection by Attributes,'' instead of the MIL–STD–105E sampling plan that is currently referenced in § 800.20.

FDA believes that, whenever feasible, it is important to harmonize its requirements with consensus standards. Harmonization helps ensure an acceptable standard of safety and effectiveness for all manufacturers and allows manufacturers to market their products more efficiently in a global economy. FDA has recognized the ASTM standards for patient examination and surgeons' gloves for the purpose of premarket notification submissions (510(k)s), and believes that it is appropriate to use the same standards for determining the acceptability of lots of medical gloves.

3. Interpretation of Defects

Since issuing § 800.20, FDA has received many questions from FDA field laboratories, glove manufacturers, importers, and private laboratories regarding the definition of defects in the current regulation. Many questions concerned whether lumps of latex material on or beneath the glove surface are considered defects. These questions arise because the definition of defects in § 800.20 refers to ''embedded foreign objects,'' and latex is not ''foreign'' to a latex glove. Other questions were whether ''mold'' is an appropriate defect to be included in a sampling plan intended primarily to detect physical defects. FDA believes these questions are valid and has addressed them in the proposed amendments.

4. Tightened Sampling Plans for Reconditioned Gloves

FDA recognizes the difficulty of adequately representing a large lot of gloves with a relatively small sample size. FDA has sometimes allowed manufacturers and importers to segregate and retest portions of the lot(s) or sizes of reconditioned gloves that initially failed FDA or private laboratory analysis to identify those portions of the larger lot(s) or sizes that meet quality requirements. The agency recognizes, however, that passing a retest does not provide the same assurance of quality as when the lot passes the initial analysis. This is due, in part, to the nature of the standard sampling plans, and in part to the fact that retesting is performed to identify acceptable portions of the larger lot(s) after failing the initial test. Recognized consensus standard sampling plans address the issue of previous test failures by allowing tightened sampling during retesting in order to provide additional assurance to the consumer. FDA proposes to apply this principle to testing of reconditioned lots that have failed an initial analysis.

5. Proposed Reclassification of Medical Gloves

On July 30, 1999, FDA published a proposed rule in the **Federal Register** (64 FR 41710) that addressed several issues pertaining to medical examination gloves, including their reclassification from class I to class II in order to provide reasonable assurance of safety and effectiveness. To provide this assurance, appropriate special controls (applicable to class II medical devices) were also proposed. The proposal to reclassify medical examination gloves reflects the increased importance of these devices in the health care arena and is consistent with the changes FDA is now proposing for § 800.20. However, this proposal to lower the acceptable level of defects in medical gloves is an independent initiative that will go forward as FDA continues to review the comments it received on the reclassification proposal.

Therefore, in summary, FDA is proposing to: (1) Lower the AQL to which the level of defects in lots of gloves is tested, thereby assuring improved quality of gloves; (2) lower the AQLs, convert units of measure to the metric system; eliminate references to obsolete sampling plans, and reference current ISO standards; thereby harmonizing with recognized consensus standards; (3) clarify visual defects and current methodology for conducting water leak testing; and (4) provide tightened sampling plans for testing reconditioned lots of medical gloves that have already failed one analysis.

Specifically, FDA is proposing to lower the AQL for surgeons' gloves from 2.5 to 1.5, and is proposing to base the sampling plans on the tables in the ISO sampling standard, ISO 2859–1995.

FDA is also proposing to lower the AQL for patient examination gloves from 4.0 to 2.5, and is proposing to base the sampling plans on the tables in ISO sampling standard, ISO 2859–1995. Lowering the AQLs for medical gloves will reduce the allowable defect level for patient examination gloves. Further, FDA is proposing to amend the regulation to tighten sampling plans for reconditioned lots of medical gloves

that have failed to meet the 1.5 or 2.5 AQL level. These reconditioned gloves would have to be sampled under a more stringent inspection standard in order to provide additional assurance that they meet the AQLs. This practice is consistent with the ISO sampling plans, which allow for tightened sampling when failures occur under normal sampling.

B. Paragraph by Paragraph Changes

1. Current Test Method (§ 800.20(b)) as Proposed General Test Method (§ 800.20(b)(1))

(Change 1) FDA proposes to rename and renumber current § 800.20(b), *Test method* as § 800.20(b)(1), *General test method*. FDA is revising the substance of the first sentence of current paragraph (b) to add the following language: ''For the purposes of this regulation, FDA's analysis of gloves for leaks, and certain other visual defects, will be conducted by an initial visual examination and by a water leak test method, using 1,000 milliliters (ml) of water.'' The purpose of these changes is to recognize that there are other visual defects addition to leaks, and that these defects can sometimes be detected by visual examination.

(Change 2) For clarification, FDA would reorganize the remaining elements of current paragraph (b) into paragraphs (b)(1)(i) through (b)(1)(iii) of proposed § 800.20(b)(1), as follows:

- The current second and third sentences would be reorganized, without revision, in proposed § 800.20(b)(1)(i), *Units examined*.
- The current fifth, sixth, and seventh sentences would be reorganized and revised in proposed § 800.20(b)(1)(ii), *Identification of defects*.
- The current fourth sentence would be revised and reorganized, together with the current seventh and eighth sentences, in proposed § 800.20(b)(1)(iii).

(Change 3) Proposed § 800.20(b)(1)(ii) changes the definition of defects from the current ''leaks, tears, mold, embedded foreign objects, etc.'' to ''tears, embedded foreign objects, or other defects visible upon initial examination that may affect the barrier integrity or leaks detected when tested in accordance with paragraph (b)(3) of this section.''

FDA is proposing to remove ''mold'' as a defect in proposed § 800.20(b)(1)(ii). The agency considers the presence of visible mold on sampled gloves as evidence that the lot is adulterated under section 501(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 351(a)), in that it consists in whole and/or in part of any filthy, putrid, or decomposed substance. The revised section removes the abbreviation, ''etc.'', as being indeterminate.

The phrase, ''other defects visible upon initial examination that may affect the barrier integrity,'' would be added in proposed § 800.20(b)(1)(ii), to encompass various other defects that may arise, including, but not limited to:

a. Extrusions of glove material on the exterior or interior surface of, or within, the film of the glove. FDA believes that such extrusions or material lumps can contribute to rips or tears near the site of the lump, during routine donning or other stretching of the glove.

b. Gloves that are fused together so that individual glove separation is impossible.

c. Gloves that adhere to each other and tear when separated into individual gloves.

(Change 4) In proposed § 800.20(b)(1)(iii), the fourth sentence in current paragraph (b) would be revised and reorganized into two sentences for clarity, reading, ''One defect in one glove is counted as one defect. A defect in both gloves in a pair is counted as two defects.'' Other proposed changes to § 800.20(b)(1)(iii) include:

- To confirm current counting practices, FDA would add the clarifying sentence, ''If multiple defects, as defined in paragraph (b)(1)(ii) of this section, are found in one glove, they are counted as one defect.''
- For further clarification, FDA is adding the sentence, ''Visual defects and leaks that are observed in the top 40 millimeters (mm) of a glove will not be counted as a defect for the purposes of this part.'' The substance of this sentence is in current § 800.20(b)(2); however, FDA is changing the unit of measure, 1 1/2 inches, to the corresponding metric unit of measure, 40 millimeters (mm), used by most standards setting organizations.

2. Current Untitled (§ 800.20(b)(1)) as Proposed Leak Test Materials (§ 800.20(b)(2))

(Change 5) FDA proposes to rename current § 800.20(b)(1) as proposed § 800.20(b)(2), *Leak test materials*. To conform current U.S. measurement units to metric measurement units used by most standards setting organizations, FDA proposes to change the current language, ''2 3/8 inch by 15-inch'' to ''60 mm by 380 mm'' and ''11 pounds'' to ''5 kilograms (kg).'' No other change would be made to current § 800.20(b)(1).

3. Current Untitled (§ 800.20(b)(2)) as Proposed Visual Defects and Leak Test Procedure, Visual Defects Examination, and Leak Test Set-Up (§ 800.20(b)(3)(i) through (b)(3)(ii))

(Change 6) FDA is proposing to renumber and revise current § 800.20(b)(2) into the following new paragraphs:

- (b)(3) *Visual defects and leak test procedures*.
- (b)(3)(i) *Visual defects examination*.
- (b)(3)(ii) *Leak test set-up*.

(Change 7) FDA is also proposing to revise current § 800.20(b)(2) in proposed paragraph (b)(3) to reorganize the section for clarity to read, ''(3) *Visual defects and leak test procedures*. Examine the sample and identify code/lot number, size, and brand as appropriate. Continue the visual examination using the following procedures:''.

(Change 8) FDA is also proposing to revise current § 800.20(b)(2) in proposed paragraph (b)(3)(i) to incorporate metric units of measure, reflecting the harmonization of the test method to international standards. The revisions would read as follows:

(i) *Visual defects examination*. Inspect the gloves for visual defects by carefully removing the glove from the wrapper, box, or package. Visually examine each glove for defects. As noted in paragraph (b)(1)(iii) of this section, a visual defect observed in the top 40 mm of a glove will not be counted as a defect for the purpose of this part. Visually defective gloves do not require further testing; however, they must be included in the total number of defective gloves counted for the sample.

(Change 9) In proposed § 800.20(b)(3)(i) in the third sentence, ''1 1/2 inches'' would be changed to ''40 mm'', to reflect the corresponding metric unit of measure used by most standards setting organizations.

(Change 10) FDA proposes to add the following statement to § 800.20(b)(3)(ii) *Leak test set up*, ''During this procedure, ensure that the exterior of the glove remains dry.'' This method conforms to the ''Standard Test Method for Detection of Holes in Medical Gloves'' found in ASTM D5151. The reason for including this step is that a leak can be detected more easily on a dry surface.

(Change 11) For ease of reading, FDA is proposing to reorganize current § 800.20(b)(3) into three paragraphs in proposed (b)(3)(iii) *Leak test examination*. The first three current sentences would be in the first paragraph, the current fourth sentence would be in the second paragraph, and the remaining three current sentences would be in the third paragraph.

4. Current Sample Plan (§ 800.20(c)) as Proposed Sampling, Inspection, Acceptance, and Adulteration (§ 800.20(c))

(Change 12) FDA is proposing to rename current paragraph § 800.20(c) paragraph, ''(c) Sampling, inspection, acceptance, and adulteration,'' and to reorganize the section as follows:

• (c)(1) *Sample plans*.

• (c)(2) *Sample sizes, inspection levels, and minimum AQLs*.

• (c)(3) *Adulteration levels and accept/reject criteria*.

(Change 13) Proposed introductory paragraph § 800.20(c) would retain the element of current paragraph (c), which identifies how FDA will sample and examine lots of gloves to determine whether the gloves are considered adulterated under section 501(c) of the act. Proposed paragraph § 800.20(c) would be revised as follows: ''(c) *Sampling, inspection, acceptance, and adulteration*. In performing the test for leaks and other visual defects described in paragraph (b) of this section, FDA will collect and inspect samples of medical gloves, and determine when the gloves are acceptable as set out in paragraphs (c)(1) through (c)(3) of this section.''

(Change 14) Proposed § 800.20(c)(1) retains the elements of current paragraph (c) that identify the sampling plans, inspection, and AQLs used by the agency in its determination of adulteration. In § 800.20(c)(1), FDA is proposing to change the standard of sampling procedures and inspection tables from ''MIL–STD–105E'' to ''ISO 2859'' because ''MIL–STD–105E'' is no longer in effect. The use of ISO 2859 is consistent with the agency's recognition of this standard as provided in section 514 of the act (21 U.S.C. 360d) (see FDA's Internet Web site at http://www.fda.gov/cdrh/stdsprog.html).

(Change 15) Proposed § 800.20(c)(2) retains the same ''single normal sampling,'' ''multiple normal sampling,'' and ''general inspection level II'' that are in current paragraph (c). In proposed paragraph (c)(2), FDA proposes lowering the minimum AQL for surgeons' gloves from the current 2.5 AQL to a 1.5 AQL. Additionally, FDA proposes to lower the minimum AQL for patient examination gloves from a 4.0 AQL to a 2.5 AQL. These changes would reduce the allowable level of defective gloves in sampled lots of medical gloves and harmonize FDA adulteration criteria with the recognized consensus standards for medical gloves.

(Change 16) FDA is proposing to remove the current table entitled ''ADULTERATION LEVEL AT 2.5 FOR SURGEONS' GLOVES'' and the current table entitled ''ADULTERATION LEVEL AT 4.0 FOR PATIENT EXAMINATION GLOVES,'' and replace them with the table entitled ''ACCEPT/REJECT CRITERIA AT 1.5 AQL FOR SURGEONS' GLOVES'' and the table entitled, ''ACCEPT/REJECT CRITERIA AT 2.5 AQL FOR PATIENT EXAMINATION GLOVES,'' following proposed § 800.20(c)(3).

5. Current Untitled (§ 800.20(d)) as Proposed Compliance (§ 800.20(d))

(Change 17) For purposes of clarification, FDA is proposing to revise § 800.20(d) as follows:

• (d) *Compliance*.

• Add (d)(1) *Detention and seizure*,

• Add (d)(2) *Reconditioning*,

• Add (d)(2)(i) *Modified sampling, inspection, and acceptance*,

• Add (d)(2)(ii) *Adulteration levels and acceptance criteria, and adulteration levels for reconditioned gloves*; and

• Add tables, ''ACCEPT/REJECT CRITERIA AT 1.5 AQL FOR RECONDITIONED SURGEONS' GLOVES'' and ''ACCEPT/REJECT CRITERIA AT 2.5 AQL FOR RECONDITIONED PATIENT EXAMINATION GLOVES'', following paragraph (d)(2)(ii).

(Change 18) Proposed introductory § 800.20(d) retains the regulatory element of current paragraph (d), which establishes that medical gloves that are ''rejected,'' i.e., fail to meet acceptance criteria in proposed § 800.20(c)(3) when tested as described in proposed § 800.20(b), are adulterated in accordance with section 501(c) of the act.

(Change 19) Detention under section 801(a) of the act (21 U.S.C. 381(a)) and seizure under section 304(b) of the act (21 U.S.C. 334(b)) are common administrative or enforcement actions FDA has taken against medical gloves that are in violation of section 501(c) of the act. FDA may detain and refuse entry to medical gloves that are presented for import and found to be adulterated under section 501(c) of the act. Medical gloves found to be adulterated while in domestic interstate commerce are subject to seizure. Agency regulatory procedures for the reconditioning of domestically manufactured gloves seized in interstate commerce are found in the FDA/ORA (Office of Regulatory Affairs) Regulatory Procedures Manual (RPM), Chapter 6 Judicial Actions, Subchapter—Seizure, Disposition of Seized Articles, Reconditioning Operations. Regulatory procedures for detained imported gloves are in RPM Chapter 9 Import Operations/Actions, Subchapter—Reconditioning. When appropriate, FDA may take other regulatory actions, such as injunction, civil money penalties, or criminal prosecution of manufacturers and individuals responsible for adulterated products. FDA is proposing to add revised § 800.20(d)(1) to include the detention and seizure of gloves that are adulterated under section 501(c) of the act because the quality falls below the level it is represented to have. Under the authority of section 801(b) of the act for imported gloves and section 304(d)(1) of the act for seized domestic articles, FDA is proposing to add revised § 800.20(d)(2) to provide the importer of record, owner, or consignee an opportunity to recondition the gloves as a lot or part of a lot, whether they are foreign or domestic gloves.

(Change 20) In § 800.20(d)(2)(i), FDA is proposing a modified sampling plan. The rationale for the plan is based on the agency's experience with reconditioned gloves, the need for greater assurance that reconditioned gloves meet minimum AQLs given the initial finding of adulteration, and the provisions in ISO 2859 for tightened sampling plans.

FDA samples medical gloves that are often presented for import in large quantities. When the ''sampling lots'' are large and include several glove sizes and manufacturing lots, FDA attempts to have each sample adequately represent each size in the proportion it occurs in the ''sampling lot.'' On occasion, manufacturers and importers have claimed that a single size or lot code may have contributed to a disproportionate number of defects that caused the sample to fail, and have requested FDA to allow the rest of the shipment to be salvaged, based on retesting of each of the segregated sizes or lot codes. Such segregation and retesting is considered reconditioning.

FDA district offices review reconditioning proposals on a case by case basis. In determining, whether to approve a reconditioning proposal, the district offices exercise discretion in considering the nature and type of defects, the degree of noncompliance with minimum AQLs, the compliance history of the manufacturer, the qualifications and reliability of the independent testing laboratories, and any other relevant factors.

When FDA has permitted manufacturers/importers of gloves that have failed FDA or private laboratory analysis to segregate and retest portions of the lot(s)/size(s), the agency's experience has been that the segregated lot(s)/sizes(s) almost always pass the retest, resulting in two contradictory

conclusions about the analyzed lot. Statistically, a passing retest result is not unexpected due to the nature of the normal sampling plans, which minimize producer risk. When failures occur under normal sampling, ISO 2859 recommends the use of tightened sampling plans for resubmitted lots in order to reduce the risk to the consumer (see part 1 section 7.4 of ISO 2859). FDA is proposing that single normal sampling plans and the tightened level of inspection, found in ISO 2859, be used in resampling and retesting medical gloves that have been reconditioned. The proposed modifications would increase the size of the sample and the number of units examined, while lowering the number of defects required for rejection. FDA believes that this would provide greater statistical assurance that reconditioned lots meet minimum AQLs.

(Change 21) FDA proposes to add § 800.20(d)(2)(ii) to establish accept/reject criteria and adulteration levels for reconditioned surgeons' gloves and patient examination gloves based on the tightened sampling plans proposed in paragraph (d)(2)(i). For convenience, FDA is adding tables following § 800.20(d)(2)(ii), which describe the number of units to examine and the accept/reject criteria for various lot sizes.

III. Environmental Impact

The agency has determined under 21 CFR 25.30(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

A. Introduction

FDA has examined the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, distributive impacts and equity). Under the Regulatory Flexibility Act, if a regulation has a significant economic impact on a substantial number of small entities, the agency must analyze regulatory options that would minimize the impact on small entities. Section 202(a) of the Unfunded Mandates Reform Act requires that agencies prepare a written statement of anticipated costs and benefits before proposing any regulation that may result in expenditure by State, local, and tribal governments, or by the private sector of $100 million in any one year (adjusted annually for inflation). Currently, such a statement is required if costs exceed $110 million for any one year.

The proposed regulation is consistent with the principles set forth in Executive Order 12866 and the two statutes. As explained in the following paragraphs, FDA does not believe the proposed regulation is a significant regulatory action, as defined in Executive Order 12866. In addition, FDA certifies under the Regulatory Flexibility Act that the proposed regulation would not result in a significant economic impact on a substantial number of small entities. The expected cost of this proposed regulation is under $110 million in any one year and is therefore not considered a major regulatory action as defined by the Unfunded Mandates Reform Act.

B. Objective of the Proposed Regulation

The objective of the proposed regulation is to reduce the risk of transmission of blood-borne pathogens (particularly HIV and hepatitis B (HBV) and C (HBC) infections). The regulation would accomplish this objective by ensuring that medical gloves (surgeons' and patient examination gloves) maintain a high level of quality with respect to the level of noted defects. By so doing, FDA also would harmonize its standard for acceptable defects with consensus quality standards developed by ISO and ASTM.

C. Current Risks of Blood-Borne Illness

Unnecessary exposures to blood-borne pathogens are of great importance to the health care community because contact with contaminated human blood or tissue products has led to increased cases of HIV, HBV, and HCV infections.

Available data cannot precisely quantify the number of new HIV cases that this proposed rule would prevent. This analysis, however, attempts to derive a conservative estimate. For the year 2000, the CDC reported a cumulative total of approximately 900,000 persons in the United States who had contracted HIV, of which 775,000 cases had progressed to AIDS (Ref. 1). Of those patients whose conditions had progressed to AIDS, almost 450,000 (58 percent) had died as of December 2000. For the year 2000, the CDC identified 21,704 new cases of HIV infection.

Approximately 5 percent of the reported HIV/AIDS cases were among health care personnel (Ref. 2). However, in an indepth analysis of occupational risk, the CDC reported that, since 1992, there have been only 56 identified incidents of occupational transmission of the HIV pathogen and all but 7 of these cases (12.5 percent) were due to percutaneous cuts or needle sticks. In addition, there were 138 other cases of HIV infection or AIDS among health care workers with occupational exposures to blood who had not reported other risk factors for HIV infection (Ref. 2). Assuming the same 12.5 percent rate for these workers implies that 17 additional cases of HIV transmission to health care personnel during this period might have been caused by cutaneous contact in an occupational setting. Consequently, a total of 24 incidents of occupational transmission of HIV to health care personnel may have occurred over the 10-year period (or 2.4 per year) due to problems with the glove barrier protection properties of gloves used in health care settings.

The CDC also reports approximately 80,000 new cases of HBV for the latest available reporting period (1999) (Ref. 3). There are approximately 1.25 million people in the United States chronically infected with HBV. While only 6 percent of those who contract HBV after the age of 5 will develop chronic conditions, 15 to 25 percent of those that do will die prematurely. Health care personnel are at some risk of this pathogen, but the availability of a vaccine has reduced the risk of negative outcomes due to exposure.

FDA has no direct data for estimating the rate of new HBV infections in health care personnel. While the CDC has reported the risk to health care workers as ''low,'' there is no definition of that term (Refs. 3 and 4). FDA estimates that as many as 4,000, or 5 percent, of all new incidents of HBV occur in health care personnel. Because occupational transmission of HBV may be approximately 5 times more likely than for HIV, FDA imputes approximately 140 annual cases of occupational transmission of HBV to health care personnel. (HIV rate of 7.3 /1,085 x 5 x 4,000.) CDC analyses have stated that ''most'' of the occupational transmissions are due to percutaneous injuries (cuts) (Ref. 4). Because 2.4 of the 7.3 annual HIV cutaneous contact transmissions (33 percent) were believed to be attributable to glove defects, FDA similarly expects that

about one-third of the 140 annual occupational transmissions of HBV infections (approximately 40 cases) may potentially be associated with the current quality level of medical gloves. If only 6 percent of these cases develop chronic conditions, then an average of 2.4 annual cases of chronic HBV are associated with defective medical gloves.

HBV currently infects 3.9 million persons (Ref. 3). Over 2.7 million patients have reported chronic conditions. More than 40,000 new cases were reported during 1999. The risk of exposure to health care workers, however, appears to be extremely low. In fact, according to the CDC, for other than needle stick punctures, no transmission of HCV for health care personnel has been documented from intact or no intact skin exposures to blood or other fluids or tissues (Ref. 4). Thus, there is little evidence that glove defects are associated with HCV exposures.

As a result, FDA estimates the overall annual transmission of blood-borne pathogens due to defects in glove barrier protection in health care settings to include 2.4 cases of HIV infection and 2.4 cases of HBV infection. Increasing the AQL of gloves by lowering the rate of acceptable defects would reduce the transmission rates of these pathogens.

D. Baseline Conditions

The current AQL for medical gloves allows a defect rate of 4.0 percent (0.04) for patient examination gloves and 2.5 percent (0.025) for surgeons' gloves. The AQL represents the proportion of sampled gloves from a given lot that may include defects such as leaks or foreign material and still be accepted for entry into the marketplace. Currently, if more than 4 percent of the sampled patient examination gloves exhibit defects, the entire lot of gloves may not be sold as medical devices. Surgeons' gloves are sampled to a higher quality level (the lower AQL requires a higher proportion of nondefective gloves in order to pass inspection), because these products have a higher likelihood of contact with bodily fluids. Of course, medical glove lots that fail to meet the AQL may be marketed as household or other products. If a sample of gloves fails to meet the AQL, the marketer may petition for resampling of the lot. The required resampling plan for a lot originally found to be out of compliance is more intensive than the original sampling plan for a randomly selected lot. Lots initially found to be out of compliance are either resampled and subsequently offered as medical gloves after meeting the current AQL, offered as nonmedical gloves, or sold in foreign markets.

Approximately 30.8 billion medical gloves were sold in the United States during the year 2000 (Ref. 6). According to FDA records, there are 417 manufacturers of medical gloves. Of these, only six are domestic firms. Malaysian manufacturers supply almost 44 percent of the medical gloves in the United States (Ref. 7). Only 250 million surgical gloves are imported each year (0.8 percent of the medical glove market) and the impact on this sector is negligibly different from overall patient examination gloves. Therefore, this analysis focuses exclusively on patient examination gloves.

FDA expects the demand for medical gloves to increase by the same rate as employment in the medical services industry. The Bureau of Labor Statistics (BLS) projects annual employment growth of 2.6 percent for this industry (NAICS 6200) (Ref. 8), which implies an annual demand for almost 40 billion medical gloves within 10 years. (A 2.6 percent annual growth rate results in an expected increase of 29.3 percent in 10 years).

Medical glove lot sizes may vary from as few as 25 gloves to as many as 500,000. According to discussions with manufacturers (Eastern Research Group, Inc. (ERG); 2001), a typical production or import lot from a foreign manufacturer contains an average of 325,000 gloves (either patient examination or surgeons'). This implies that the U.S. medical glove market currently imports about 95,000 lots of gloves per year. FDA currently samples only about 1.5 percent (0.015) of all glove lots, or 1,400 lots per year. Within 10 years, FDA expects the number of lots offered for import to increase to 122,500 per year. If the compliance sampling rate remains constant, FDA would sample 1,850 lots during that year.

FDA's Winchester Engineering and Analysis Center (WEAC) analyzed results from samples collected from 2000 and 2001. These samples represent approximately one-third of FDA's total sampling effort for that period. A total of 98,067 gloves were tested from 942 separate lots. Of these gloves, 2,354 (0.024) were defective, which implies that 2.4 percent of marketed gloves are likely to be defective. If so, then approximately 740 million defective medical gloves are currently marketed (30.8 billion gloves x 0.024). At the current AQL of 4.0 percent, 28 lots failed (0.0297) the WEAC analysis. Consequently, approximately 42 of the annually sampled lots are defective (1,400 x 0.0297). By the 10th year, in the absence of the proposed regulation, 955 million defective gloves would be marketed and 55 percent of the sampled lots would fail to meet the AQL.

FDA allows glove lots that fail to meet the AQL to be resampled. Sponsors usually attempt to resample the glove lot rather than divert the entire lot to alternative markets. According to discussions with industry sources and testing laboratories, the cost of domestic lot resembling and retesting for leakage and tensile strength equals approximately $1,400. The current annual industry cost of resampling glove lot failures with the current AQL, therefore, is approximately $59,000 (42 lots x $1,400 per lot). This resampling and retesting cost would equal $77,000 within 10 years.

E. Costs of the Proposed Regulation

FDA expects that the proposed regulation would result in changed shipping practices by medical glove manufacturers. Currently, manufacturers use the target AQLs as a guide for releasing production lots of gloves for export to the United States because the release criteria are lower in the United States. Manufacturers attempt to avoid having three lot inspection failures within a 24-month period, because this results in rejection of future imports under FDA's current recidivist policy. Thus, to maintain an uninterrupted supply of gloves to customers, and to guard brand loyalty while avoiding the recidivist list, manufacturers would be expected to raise their level of quality control to at least maintain the current average lot rejection rate of 2.97 percent. FDA also expects the regulation to increase the costs of sampling by requiring larger and more detailed sampling plans to assure that the lower AQL is met for each inspected glove lot. FDA does not envision increased regulatory oversight costs because the number of inspections is not expected to change.

1. Costs of Quality Control

Manufacturers currently conduct quality control tests on glove lots prior to release. These tests include water-tight leak and tensile strength assays. According to interviews with glove manufacturers, the current cost of conducting these tests at the manufacturing site is approximately $310 per lot, whereas more stringent quality control testing may cost an additional $45 per lot. The additional cost is for increased inventory and larger sample sizes to ensure more precise measurements at the lower AQL. Because approximately 95,000 lots of medical gloves are imported per year,

the expected costs are $4.3 million (95,000 lots x $45 per lot). Due to the expected increase in the demand for medical gloves by the 10th evaluation year, the compliance cost of meeting this increased quality level will equal $5.5 million. Over the 10-year period, the average annualized cost of this increased level of testing (at a 7 percent discount rate) is $4.9 million.

2. Increased Sampling Costs

A lower AQL would result in increased sampling costs for imported glove lots. The increased sampling costs would result from the need to test greater quantities of gloves to ensure sufficient statistical power. Based on reported costs from U.S. testing laboratories, ERG, an independent economic contractor, estimated that increased testing would add approximately $200 to the current costs of $1,400 per sample. (The difference between this increased cost and the $310 increased import sampling cost is attributable to lower costs in the foreign countries that produce medical gloves.) FDA currently samples about 1.5 percent of the 95,000 annual imported lots, or 1,400 samples. Thus, the increased sampling costs due to the proposal are $0.3 million ($1,400 x $200). Within 10 years, this increased cost will equal $0.4 million (due to expected increases in the number of inspected glove lots) and the average annualized sampling cost (at a 7 percent discount rate) increase is $0.3 million.

3. Withheld Lots

In addition, the proposed AQL is likely to result in an increase in the number of lots of medical gloves that are not released for shipment to the U.S. medical market. For example, manufacturers may attempt to maintain a target compliance level in order to avoid FDA's recidivist listing. FDA's WEAC research laboratory sampled 942 lots and discovered that 28 failed using the current AQL while 79 lots failed using the proposed AQL. To maintain the original 0.0297 (28/942) lot failure rate, the 53 lots with the highest defect rate would have to be held back by the affected manufacturers (.056)[1]. Therefore, FDA expects, that under the proposed AQL, approximately 5,500 lots would be held back by manufacturers. In order to meet the expected demand in 10 years, 7,000 lots would be held back. FDA believes that glove lots that fail to meet the proposed AQL medical quality standards would most likely be sold as nonmedical gloves. Manufacturers and distributors would experience some loss of revenue from this shift, because of the price premium commanded by medical gloves. FDA believes this loss would be inconsequential.

4. Costs of FDA Inspections

FDA does not envision increased inspection costs due to the proposed regulation. The rate of sampled glove lots is not expected to change and FDA resources are not expected to increase over the evaluation period.

5. Total Costs

In sum, therefore, FDA estimates that the proposed regulation would have an average annualized cost of about $5.2 million.

F. Benefits of the Proposed Regulation

The proposed regulation would result in public health gains by reducing the frequency of blood-borne pathogen transmissions due to defects in the barrier protection provided by medical gloves. Based on an implied societal willingness to pay (WTP), an annualized monetary benefit of $12.3 million would be saved due to fewer pathogen transmissions and unnecessary blood screens. Moreover, fewer glove defects would reduce the number of, and, therefore, the cost and anxiety associated with, unnecessary blood screens (i.e., those that yield negative results for health care personnel).

1. Reductions in Marketed Defective Gloves

As noted in the previous paragraphs, FDA finds that approximately 740 million defective gloves are marketed each year in the United States, or 2.4 percent of all medical gloves. In the absence of this regulation, FDA expects that the number of defective medical gloves marketed in the United States each year would increase to 955 million gloves within 10 years. The proposed regulation would substantially reduce this figure.

WEAC's analysis of 98,067 medical gloves from 942 sampled lots collected in 2000 and 2001 resulted in approximately 3 percent lot failures under the current AQL of 4 percent (28 failed lots). This lot failure rate was associated with 2,356 defective gloves, or 2.4 percent of the total number of sampled gloves. Under the proposed AQL of 2.5 percent, the WEAC analysis concluded that 51 additional lots would fail (a total of 79 failed lots), increasing the lot failure rate from 2.97 percent to 8.39 percent.

As discussed earlier, FDA maintains a recidivist policy under which manufacturers are denied import entry if three lots fail statistical sampling within a 24-month period. To avoid the denial of entry, manufacturers may be expected to hold a sufficient number of defective lots from shipment in order to maintain the same target lot failure rate (approximately 3 percent) with a new AQL. For example, removing the 53 most defective lots in the testing sample would result in 26 lot failures from 889 total lots, thereby maintaining the original 2.92 percent lot failure rate. This scenario leaves 85,172 total gloves in the sample, of which 1,512 gloves were defective, resulting in a glove defect rate of 1.78 percent. The proposed regulation, therefore, could reduce the proportion of marketed defective medical gloves from 2.4 percent of all marketed gloves to 1.78 percent of all marketed gloves.

The implications of this expected reduction in defective gloves are significant. The current AQL is associated with 740 million glove defects in the present year and within 10 years would result in 955 million annually marketed defective medical gloves. If the proposed AQL were in place, the current annual number of defective gloves would approximate 548 million and within 10 years would reach 709 million. The number of defective gloves, therefore, would be reduced by more than 25 percent due to the new AQL.

2. Reductions in Blood-Borne Pathogens

FDA has estimated that, on average, there are potentially 4.8 annual transmissions of blood-borne pathogens associated with medical glove defects (section IV.C of this document). These transmissions include 2.4 cases of HIV and 2.4 cases of chronic HBV. Because there are currently no documented cases of cutaneous transmission of HCV that would be affected by improving glove quality levels, this analysis does not consider potential HCV cases.

a. *Reductions in HIV transmission*. While the direct relationship between defective medical gloves and HIV is unknown, FDA believes it is reasonable to apply the proportional reduction in the number of defective gloves due to the proposed regulation (about 25 percent) to the annual transmission rate of the HIV pathogen to health care personnel. In the absence of this regulation, the current expectation of 2.4 annual cases of HIV transmission to health care personnel would likely increase to 3.1 annual cases within 10

[1] The current lot failure rate (28/942=0.0297) is reached by removing 53 defective lots from the sample. If only the 51 additional failing lots are removed, the overall failure rate is 0.0314 (28/891). The expected future failure rate is 0.0292 (26/889). FDA expects the withheld lots to include those with the highest defect rates.

years due to the expected growth of employment in the health services industry. However, if the proposed AQL were in place, FDA forecasts the expected value of the annual transmission of HIV in health care personnel to equal 1.8 cases during the first effective year and 2.3 cases by the 10th year (based on the expected proportionate decrease in marketed defective gloves). Over the entire 10-year evaluation period, these assumptions suggest that the regulation would prevent approximately seven cases of HIV transmission to health care personnel.

b. *Reductions in HBV transmissions*. Hepatitis B transmissions to health care personnel are more common than cutaneous HIV transmissions. However, little specific data are available to identify affected patient populations. FDA has estimated that as many as 2.4 cutaneous transmissions of chronic HBV may be due to defective medical gloves each year. In the absence of this rule, this number is expected to increase to 3.1 annual transmissions within 10 years, based on the expected employment growth in the health services industry.

Implementation of the proposed regulation would decrease these transmissions by about 25 percent. Under the new standard, FDA expects 1.8 HBV transmissions during the first evaluation year, a reduction of 0.6 transmissions from baseline conditions. By the 10th evaluation year, FDA expects 2.3 chronic HBV transmissions under the proposed AQL, a total of 0.8 fewer cases. Overall, about seven transmissions of chronic HBV would be avoided due to the proposed regulation over a 10-year period.

3. Reductions in the Number of Blood Screening Tests

As the number of defective gloves marketed in the United States decreases due to this regulation, corresponding reductions would be expected in the number of unnecessary blood screens. FDA contacted several research hospitals to ascertain how frequently health care personnel identify glove failure as a reason for initiating blood screens. Respondents stated that about 5 percent of all glove failures are noticed by the user and about 1 percent of these identified failures are reported to the facility for additional screening (Refs. 9 and 10). Respondents noted that the glove failure could occur prior to patient contact. The additional screening may apply to the affected health care personnel or the patient if identified. The great majority of these screens result in negative findings.

As shown in the previous paragraphs, during the first evaluation year under the new rule, FDA projects the number of defective gloves marketed in the United States to decrease from 740 to 548 million, a reduction of 192 million defective gloves. By the 10th year, the annual number of defective gloves is expected to decrease from 955 to 709 million, a reduction of 246 million defective gloves. At the rates of potential identification (5 percent) and reports of contact with pathogens (1 percent) obtained from the research hospital sector, the proposed regulation would result in 96,000 fewer unnecessary blood screens during the first year (192 million fewer defects x 0.05 x 0.01). By the 10th year, 123,000 fewer annual blood screens are expected. Over the entire period, the regulation could result in 1,095,000 fewer unnecessary blood screens.

4. Value of Avoiding Blood-Borne Pathogen Transmissions

a. *Quality adjusted life-years*. The economic literature includes many attempts to quantify societal values of health. A widely cited methodology assesses wage differentials necessary to attract workers to riskier occupations. This research indicates that society is willing to pay approximately $5 million to avoid a statistical death (Refs. 11, 12, and 13). That is, social values appear to show that people are willing to pay a significant number of dollars to reduce even a small risk of death; or similarly, to demand significant payments to accept even marginally higher risks.

Because this estimate is predominantly based on blue-collar occupations that mainly attract males between the ages of 30 and 40, FDA adjusted the life-expectancy of a 35 year-old male to account for future bed and nonbed disability (Refs. 14, 15, and 16), and amortized the $5 million (at a 7 percent discount rate) over the resulting quality-adjusted life span. The result yields an estimate of $373,000 per quality adjusted life-year (QALY), which implies that society is willing to pay $373,000 for the statistical probability of a year of perfect health.

b. *Value of morbidity losses*. In theory, loss of health reduces the willingness to pay for additional longevity. Many studies have attempted to estimate the relative loss of health for different conditions of morbidity. One method utilizes the Kaplan-Bush Index of Well-Being. This index assigns relative weights to functional states, and then adjusts the resulting weighted value by the problem/symptom complex that contributed to loss of function (Refs. 16 and 17). Functional state is measured in three areas: Mobility, social activity, and physical activity. For example, with treatment, chronic HBV may not have a major impact on any of these functions; a patient could drive a car, walk without a physical problem, and participate in work, school, housework, and other activities. However, because a patient with HBV has an ongoing problem/symptom complex, the relative weight of this functional state is estimated at 0.7433.[2]

This methodology then adjusts the weighted value of the functional state by the most severe problem/symptom complex contributing to that state. In the case of HBV, the most common symptom is general tiredness, weakness, or weight loss. This complex has a derived relative weight of +0.0027, which when added to the weighted functional state value results in a relative weight of 0.7460. The loss of relative health due to HBV, therefore, is expected to equal 1.0000 minus 0.7460, or 0.2540 of perfect health. When this relative health loss is applied to the derived value of a QALY, it implies that society is willing to pay $93,000 per year to avoid a case of HBV ($373,000 times 0.2540). This value includes the potential costs of treatment and additional prevention, as well as any perceived pain and suffering.

FDA compared this methodology to a variety of published estimates of preference ratings of morbidity prepared by the Harvard Center for Risk Analysis (HCRA) (Ref. 17a). The published ratings of 14 studies of chronic HBV ranged from 0.75 to 1.00 (no impact). While the estimate used in this analysis (0.746) is in the low end of the collected published studies, FDA notes that most of the expressed preferences that were derived from time trade-off and standard gamble methodologies as compared to author judgment were closer to the FDA estimate. A health care worker who may contract HBV may typically have a life expectancy of approximately 40 years (as of 2000, a 40-year old female has a future life expectancy of 41.1 years (Ref. 14)). The present value of $93,000 per year for 40 years at a 7 percent discount rate implies that society is willing to pay $1.24 million to avoid the statistical likelihood of a case of chronic HBV in health care personnel.

Deriving society's implied WTP to avoid HIV is more complicated. The CDC has published data indicating that approximately 80 percent of all HIV infections progress to AIDS within 5 years. Of the cases of AIDS, over half

[2] Note: The implication is that an ideal health state is valued as 1.0000 and mortality at 0.0000.

(approximately 60 percent) result in mortality within an additional 5 years. Thus, for a 10 year period, FDA tracked three potential outcomes: Patients who contract HIV but do not progress to AIDS (20 percent); patients who contract HIV and progress to AIDS in 5 years and survive (32 percent); and patients who contract HIV, progress to AIDS within 5 years, and then die within the next 5 years (48 percent).

HIV infection may not affect either mobility or social activity. However, such an infection may somewhat inhibit physical activity. HIV patients are able to walk, but with some physical limitations. This functional state has a relative weight of 0.6769. The main problem/symptom complex of HIV is general tiredness (as for HBV), so the selected functional weight is adjusted by +0.0027 to result in relative well-being of 0.6796. As a result, the relative societal willingness to pay to avoid the statistical probability of a case of HIV in health care personnel is estimated at approximately $120,000 per year ($373,000 times [1.0000 minus 0.6796]). According to the collected preference scores (Ref. 17a) in the Car's Catalog of Preference Scores, the average estimated published preference rating for HIV infection was 0.7 (range 0.3 to 1.00).

If HIV progresses to AIDS, a patient's functional state is likely to be more restricted. An AIDS patient requires some assistance with transportation, is limited in physical activity, and is limited in work, school, or household activity. The relative weight for this functional state is 0.5402. The main problem/symptom of AIDS remains general tiredness and loss of weight (as with HIV and HBV), so the adjusted health state is 0.5429. This results in a derived societal willingness to pay to avoid the statistical probability of a case of AIDS of about $170,000 per year ($373,000 times [1.0000 minus 0.5429]). The Car's Catalog of Preference Scores (Ref. 17a) reports average preference ratings of 0.375 for cases of AIDS with ranges from 0.0 to 0.5.

As discussed earlier, the derived societal willingness to pay to avoid a statistical mortality has been estimated to equal approximately $5 million.

Using these estimates, the WTP to avoid the statistical probability of an HIV transmission in health care personnel is calculated as the sum of:

- 20 percent of the percent value (PV) (at 7 percent discount rate) of avoiding 40 years of HIV infection.
- 32 percent of the sum of the PV of avoiding 5 years of HIV infection plus the PV of avoiding 35 years of AIDS infection occurring 5 years in the future.
- 48 percent of the sum of the PV of avoiding 5 years of HIV infection plus the PV of avoiding 5 years of AIDS infection occurring 5 years in the future plus the discounted WTP of avoiding a statistical mortality occurring 10 years in the future.

The PV of avoiding 40 years of health loss valued at $120,000 per year is approximately $1.6 million (at 7 percent discount). Twenty percent of this figure equals $320,000. The PV of avoiding 5 years of health loss to due HIV infection is equal to $492,000. The PV of avoiding the health loss expected from 35 years of AIDS infection (valued at $170,000 per year) is equivalent to $2.2 million. The present value of this amount occurring 5 years in the future (at 7 percent) is $1.6 million. When added to the PV of avoiding the health loss associated with 5 years of HIV infection ($492,000), the total estimated present value of the societal willingness to pay to avoid a statistical case of this outcome is about $2.1 million. Thirty-two percent of this figure equals $660,000. The PV of avoiding the health loss expected from 5 years of AIDS infection ($700,000) occurring 5 years in the future is equivalent to $497,000 (at 7 percent discount rate). The PV of avoiding a statistical mortality ($5 million) 10 years in the future is $2.54 million (at 7 percent discount). The total societal WTP to avoid a case of HIV with mortality as an outcome, therefore, is $3.5 million ($493,000 plus $497,000 plus $2.54 million). Forty-eight percent of this figure equals approximately $1.7 million. Summing the weighted amounts of the three expected outcomes for a case of HIV infection ($320,000 plus $660,000 plus $1,700,000) equals an estimated societal willingness to pay $2.68 million to avoid a statistical transmission of HIV.

In sum, the estimated societal values of avoiding morbidity and mortality due to the transmission of blood-borne pathogens are estimated to be equivalent to $1.24 million per transmission of chronic HBV and $2.68 million per transmission of HIV. FDA notes that other recent cost-effectiveness research (Ref. 18) has reported cost-effectiveness estimates (excluding pain and suffering) of $2.1 million per avoided case of HIV.

FDA believes the methodology to estimate the value of avoided HBV and HIV infection is reasonable and supportable. Nevertheless, comparison with reported published preferences show some estimates to place higher values on avoidance and some lower than the average collected weight. FDA acknowledges these differences and solicits comment on other appropriate measures for estimating the societal value of avoiding blood-borne infections.

c. *Benefits of morbidity and fatality avoidance*. The proposed regulation would reduce both HBV and HIV transmissions by reducing the prevalence of defective medical gloves used as barrier protection. During the first evaluation year, the regulation would result in 0.6 fewer chronic HBV transmissions to health care personnel. Applying the assumed societal WTP of $1.24 million to avoid the statistical probability of one chronic HBV infection, the expected benefit of avoiding these transmissions is $0.7 million. By the 10th evaluation year, 0.8 annual transmissions would be avoided at a value of $1.0 million. The PV of avoiding almost seven chronic HBV transmissions over a 10 year period equals $6.1 million (at a 7 percent discount rate), which is equivalent to an average annualized value of $0.9 million for the entire 10-year evaluation period.

Also, in the first evaluation year, FDA expects that the proposed regulation would result in the probability of 0.6 fewer transmissions of HIV caused by defective gloves. Assuming that society is willing to pay $2.68 million to avoid the probability of a single HIV transmission, the benefit of avoiding these transmissions equals $1.6 million. By the 10th evaluation year, FDA expects the proposed regulation to result in 0.8 fewer HIV transmissions, which are valued at over $2.1 million. The societal PV of avoiding seven transmissions of HIV over the 10-year evaluation period is $12.9 million (at 7 percent discount rate) and is equivalent to an average annualized benefit of $1.8 million.

In sum, FDA estimates that the reduction in blood-borne pathogen transmissions due to this proposed rule would produce health benefits valued at $2.7 million per year. Much of this benefit (almost 67 percent) is attributable to reducing the incidence of HIV.

5. Value of Avoiding Unnecessary Blood Screens

The expected decline in the number of defective medical gloves would lead to a smaller number of unnecessary blood screens and thereby provide two potential benefits. First, the direct cost of conducting screens to determine whether the pathogen was transmitted to health care personnel would fall. Second, the psychological anxiety and stress that accompanies the possibility that a pathogen was transmitted to an individual would decrease.

a. *Cost of conducting blood screens*. FDA has collected data from the

American Red Cross (Ref. 5) on the costs of conducting blood screening tests designed to ensure the safety of the blood supply. These estimates include the costs of collection (including personnel, needles, bags, and other supplies) at $47.66 per sample; sample testing at $25.16 per sample; and overhead at $3.26 per sample. The estimated direct testing cost per blood sample is the sum of these amounts, or $76 per test.

b. *Anxiety and stress associated with potential transmission of pathogens*. The psychological literature has noted that levels of anxiety and stress impact participation in public health screening programs and thereby affect physiological health (Refs. 19, 20, and 21). Also, patients who experience high levels of uncertainty due to the possibility of contracting serious, threatening diseases experience heightened levels of stress and anxiety until the results of the testing screens are negative (Ref. 20). According to one measurement scale of well-being, reduced mental lucidity, depression, crying, lack of concentration, or other signs of adverse psychological sequence may detract as much as 8 percent from overall feelings of well-being (Ref. 16) and have outcomes similar to physiological morbidity. Scaling of the relative stress caused by events shows that concerns of personal health, by themselves, are likely, on average, to contribute approximately one-sixth of the total weighting required to trigger a major stressful episode (Refs. 20, 21 and 22). Thus, FDA approximates that increased stress and anxiety concerning possible exposure to pathogens may reduce overall sense of well-being and result in health loss of approximately 1.3 percent (0.013).

As described earlier, FDA has calculated an assumed WTP of $373,000 for a statistical QALY. This figure implies that the probability of each day of quality adjusted life has a social value of $1,022 ($373,000/365). If blood test results are usually obtained within 24 hours, the resultant loss of societal well-being for each test subject is valued at approximately $13 ($1,022 times 0.013).

c. *Benefit of test avoidance*. By combining the avoided direct cost of tests and the value of avoided anxiety and stress, FDA estimates that the societal benefit of avoiding an unnecessary blood test is $89 per sample. During the first evaluation year, FDA expects 96,000 fewer unnecessary blood screens because of the expected reduction in defective medical gloves due to the proposed regulation. The implied societal WTP to avoid these unnecessary screens is $8.5 million. During the 10th evaluation year, approximately 123,000 fewer unnecessary blood screens are expected with a resultant benefit of $10.9 million. The PV of each year's reduced cost of testing and anxiety totals $66.5 million for the entire period (at a 7 percent discount rate) and an average annualized amount of $9.6 million. Of the average annualized amount, $8.2 million represents reductions in the direct testing costs and $1.4 million represents reduced anxiety associated with possible infection by a contagious agent.

6. Total Benefits

FDA estimates that the proposed regulation would reduce the availability of defective medical gloves by over 25 percent, resulting in over 2.2 billion fewer defective gloves over a 10-year period. During this time, FDA expects that reduction in defective gloves would result in almost 7 fewer cases of chronic HBV, 7 fewer cases of HIV, and 1.1 million fewer unnecessary blood screens. Based on an implied societal WTP, the average annualized benefits of the fewer pathogen transmissions and unnecessary blood screens would equal $12.3 million.

G. Small Business Impact—Initial Regulatory Flexibility Analysis

FDA finds that the proposed regulation would not have a significant impact on a substantial number of small entities. There are currently 417 manufacturers of medical gloves, of which 411 are foreign. Because medical gloves are almost exclusively manufactured by foreign firms, there would not be a significant economic impact on a substantial number of domestic small entities. Moreover, FDA does not expect the increased manufacturer costs to be directly passed on to end users, because the cost increases would affect only a minority of global manufacturers and, therefore, competition would require these manufacturers to absorb these costs.

H. Conclusion

FDA has conducted an analysis of the proposed regulation, using outside economic consultants. The estimated annualized costs equal $5.2 million, while the estimated annualized benefits equal $12.3 million. FDA certifies that the proposed regulation would not have a significant economic impact on a substantial number of small entities because medical gloves are imported from foreign manufacturers not subject to the Regulatory Flexibility Act. All six domestic manufacturers of medical gloves employ more than 1,200 workers. The Small Business Administration designates as small any entity with fewer than 500 employees in this industry.

V. Submission of Comments and Proposed Effective Date

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**), written or electronic comments regarding this document. Submit a single copy of electronic comments to *http://www.fda.gov/dockets/ecomments* or two copies of any mailed comments, except that individuals may submit one hard copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FDA proposes that any final rule that may issue based on this proposal become effective 90 days after its date of publication in the **Federal Register**.

VI. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520). No burden has been estimated for the requirements in § 800.20 because recordkeeping of tests and samples is a usual and customary business practice. Under 5 CFR 1320.3(b)(2), the time, effort, and financial resources necessary to comply with a collection of information are excluded from the burden estimate if the reporting, recordkeeping or disclosure activities needed to comply are usual and customary because they would occur in the normal course of activities.

VII. References

The following references have been placed on display in the Dockets Management Branch and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. FDA has verified the Web site addresses, but is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.

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List of Subjects in 21 CFR Part 800

Administrative practice and procedure, Medical devices, Ophthalmic goods and services, Packaging and containers, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 800 be amended as follows:

PART 800—GENERAL

1. The authority citation for 21 CFR part 800 continues to read as follows:

Authority: 21 U.S.C. 321, 334, 351, 352, 355, 360e, 360i, 360k, 361, 362, 371.

2. Section 800.20 is amended by revising paragraphs (b), (c), and (d) to read as follows:

§ 800.20 Patient examination gloves and surgeons' gloves; sample plans and test method for leakage defects; adulteration.

* * * * *

(b)(1) *General test method*. For the purposes of this part, FDA's analysis of gloves for leaks and certain other visual defects will be conducted by an initial visual examination and by a water leak method, using 1,000 milliliters (ml) of water.

(i) *Units examined*. Each medical glove will be analyzed independently. When packaged as pairs, each glove is considered separately, and both gloves will be analyzed.

(ii) *Identification of defects*. For this test, defects are defined as tears, embedded foreign objects, or other defects visible upon initial examination that may affect the barrier integrity, or leaks detected when tested in accordance with paragraph (b)(3) of this section. A leak is defined as the appearance of water on the outside of the glove. This emergence of water from the glove constitutes a watertight barrier failure.

(iii) *Factors for counting defects*. One defect in one glove is counted as one defect. A defect in both gloves in a pair of gloves is counted as two defects. If multiple defects, as defined in paragraph (b)(1)(ii) of this section, are found in one glove, they are counted as one defect. Visual defects and leaks that are observed in the top 40 millimeters (mm) of a glove will not be counted as a defect for the purposes of this part.

(2) *Leak test materials*. The following materials are required for testing:

(i) A 60 mm by 380 mm (clear) plastic cylinder with a hook on one end and a mark scored 40 mm from the other end (a cylinder of another size may be used if it accommodates both cuff diameter and any water above the glove capacity);

(ii) Elastic strapping with velcro or other fastening material;

(iii) Automatic water-dispensing apparatus or manual device capable of delivering 1,000 ml of water;

(iv) Stand with horizontal rod for hanging the hook end of the plastic tube. The horizontal support rod must be capable of holding the weight of the total number of gloves that will be suspended at any one time, e.g., five gloves suspended will weigh about 5 kilograms (kg).

(3) *Visual defects and leak test procedures*. Examine the sample and identify code/lot number, size, and brand as appropriate. Continue the visual examination using the following procedures:

(i) *Visual defects examination*. Inspect the gloves for visual defects by carefully removing the glove from the wrapper, box, or package. Visually examine each glove for defects. As noted in paragraph (b)(1)(iii) of this section, a visual defect observed in the top 40 mm of a glove will not be counted as a defect for the purpose of this part. Visually defective gloves do not require further testing, however, they must be included in the total number of defective gloves counted for the sample.

(ii) *Leak test set-up*. (A) During this procedure, ensure that the exterior of the glove remains dry. Attach the glove to the plastic fill tube by bringing the cuff end to the 40 mm mark and fastening with elastic strapping to make a watertight seal.

(B) Add 1,000 ml of room temperature water (i.e., 20 °C to 30 °C) into the open end of the fill tube. The water shall pass freely into the glove. (With some larger sizes of long-cuffed surgeons' gloves, the water level may reach only the base of the thumb. With some smaller gloves, the water level may extend several inches up the fill tube.)

(iii) *Leak test examination*. Immediately after adding the water, examine the glove for water leaks. Do not squeeze the glove; use only minimum manipulation to spread the fingers to check for leaks. Water drops may be blotted to confirm leaking.

(A) If the glove does not leak immediately, keep the glove/filling tube assembly upright and hang the assembly vertically from the horizontal rod, using the wire hook on the open end of the fill tube (do not support the filled glove while transferring).

(B) Make a second observation for leaks 2 minutes after addition of the water to the glove. Use only minimum manipulation of the fingers to check for leaks. Record the number of defective gloves.

(c) *Sampling, inspection, acceptance, and adulteration*. In performing the test

for leaks and other visual defects described in paragraph (b) of this section, FDA will collect and inspect samples of medical gloves, and determine when the gloves are acceptable as set out in paragraphs (c)(1) through (c)(3) of this section.

(1) *Sample plans.* FDA will collect samples from lots of medical gloves in accordance with agency sampling plans. These plans are based on sample sizes, levels of sample inspection, and acceptable quality levels (AQLs) found in the International Standard Organization's standard, ISO 2859, Sampling Procedures For Inspection By Attributes.

(2) *Sample sizes, inspection levels, and minimum AQLs.* FDA will use single normal sampling for lots of 1,200 gloves or less and multiple normal sampling for all larger lots. FDA will use general inspection level II in determining the sample size for any lot size. As shown in the tables following paragraph (c)(3) of this section, FDA considers a 1.5 AQL to be the minimum level of quality acceptable for surgeons' gloves and a 2.5 AQL to be the minimum level of quality acceptable for patient examination gloves.

(3) *Adulteration levels and accept/reject criteria.* FDA considers a lot of medical gloves to be adulterated when the number of defective gloves found in the tested sample meets or exceeds the applicable rejection number at the 1.5 AQL for surgeons' gloves or the 2.5 AQL for patient examination gloves. These acceptance and rejection numbers are identified in the tables following paragraph (c)(3) of this section as follows:

ACCEPT/REJECT CRITERIA AT 1.5 AQL FOR SURGEONS' GLOVES

Lot Size	Sample	Sample Size	Number Examined	Number Defective	
				Accept	Reject
8 to 90	Single sample		8	0	1
91 to 280	Single sample		32	1	2
281 to 500	Single sample		50	2	3
501 to 1,200	Single sample		80	3	4
1,201 to 3,200	First	32	32	0	4
	Second	32	64	1	5
	Third	32	96	2	6
	Fourth	32	128	3	7
	Fifth	32	160	5	8
	Sixth	32	192	7	9
	Seventh	32	224	9	10
3,201 to 10,000	First	50	50	0	4
	Second	50	100	1	6
	Third	50	150	3	8
	Fourth	50	200	5	10
	Fifth	50	250	7	11
	Sixth	50	300	10	12
	Seventh	50	350	13	14
10,001 to 35,000	First	80	80	0	5
	Second	80	160	3	8
	Third	80	240	6	10
	Fourth	80	320	8	13
	Fifth	80	400	11	15
	Sixth	80	480	14	17
	Seventh	80	560	18	19
35,000 and above	First	125	125	1	7
	Second	125	250	4	10
	Third	125	375	8	13
	Fourth	125	500	12	17
	Fifth	125	625	17	20
	Sixth	125	750	21	23
	Seventh	125	875	25	26

ACCEPT/REJECT CRITERIA AT 2.5 AQL FOR PATIENT EXAMINATION GLOVES

Lot Size	Sample	Sample Size	Number Examined	Number Defective	
				Accept	Reject
5 to 50	Single sample		5	0	1
51 to 150	Single sample		20	1	2
151 to 280	Single sample		32	2	3

ACCEPT/REJECT CRITERIA AT 2.5 AQL FOR PATIENT EXAMINATION GLOVES—Continued

Lot Size	Sample	Sample Size	Number Examined	Number Defective	
				Accept	Reject
281 to 500	Single sample		50	3	4
501 to 1,200	Single sample		80	5	6
1,201 to 3,200	First	32	32	0	4
	Second	32	64	1	6
	Third	32	96	3	8
	Fourth	32	128	5	10
	Fifth	32	160	7	11
	Sixth	32	192	10	12
	Seventh	32	224	13	14
3,201 to 10,000	First	50	50	0	5
	Second	50	100	3	8
	Third	50	150	6	10
	Fourth	50	200	8	13
	Fifth	50	250	11	15
	Sixth	50	300	14	17
	Seventh	50	350	18	19
10,001 to 35,000	First	80	80	1	7
	Second	80	160	4	10
	Third	80	240	8	13
	Fourth	80	320	12	17
	Fifth	80	400	17	20
	Sixth	80	480	21	23
	Seventh	80	560	25	26
35,000 and above	First	125	125	2	9
	Second	125	250	7	14
	Third	125	375	13	19
	Fourth	125	500	19	25
	Fifth	125	625	25	29
	Sixth	125	750	31	33
	Seventh	125	875	37	38

(d) *Compliance*. Lots of gloves that are sampled, tested, and rejected using procedures in paragraphs (b) and (c) of this section, are considered adulterated within the meaning of section 501(c) of the act.

(1) *Detention and seizure*. Lots of gloves that are adulterated under section 501(c) of the act are subject to administrative and judicial action, such as detention of imported products and seizure of domestic products.

(2) *Reconditioning*. FDA may authorize the owner of the product, or the owner's representative, to attempt to recondition, i.e., bring into compliance with the act, a lot or part of a lot of foreign gloves detained at importation, or a lot or part of a lot of seized domestic gloves.

(i) *Modified sampling, inspection, and acceptance*. If FDA authorizes reconditioning of a lot or portion of a lot of adulterated gloves, testing to confirm that the reconditioned gloves meet AQLs must be performed by an independent testing facility. The following tightened sampling plan must be followed, as described in ISO 2859 ''Sampling Procedures for Inspection by Attributes:''

(A) General inspection level II,

(B) Single sampling plans for tightened inspection,

(C) 1.5 AQL for surgeons' gloves, and

(D) 2.5 AQL for patient examination gloves.

(ii) *Adulteration levels and acceptance criteria for reconditioned gloves*. (A) FDA considers a lot or part of a lot of adulterated gloves, that is reconditioned in accordance with paragraph (d)(2)(i) of this section, to be acceptable when the number of defective gloves found in the tested sample does not exceed the acceptance number in the appropriate tables in paragraph (d)(2)(ii)(B) of this section for reconditioned surgeons' gloves or patient examination gloves.

(B) FDA considers a reconditioned lot of medical gloves to be adulterated within the meaning of section 501(c) of the act when the number of defective gloves found in the tested sample meets or exceeds the applicable rejection number in the tables following paragraph (d)(2)(ii)(B) of this section:

ACCEPT/REJECT CRITERIA AT 1.5 AQL FOR RECONDITIONED SURGEONS' GLOVES

Lot Size	Sample	Sample Size	Number Examined	Number Defective	
				Accept	Reject
13 to 90	Single sample		13	0	1

ACCEPT/REJECT CRITERIA AT 1.5 AQL FOR RECONDITIONED SURGEONS' GLOVES—Continued

Lot Size	Sample	Sample Size	Number Examined	Number Defective	
				Accept	Reject
91 to 500	Single sample		50	1	2
501 to 1,200	Single sample		80	2	3
1,201 to 3,200	Single sample		125	3	4
3,201 to 10,000	Single sample		200	5	6
10,001 to 35,000	Single sample		315	8	9
35,000 and above	Single sample		500	12	13

ACCEPT/REJECT CRITERIA AT 2.5 AQL FOR RECONDITIONED PATIENT EXAMINATION GLOVES

Lot Size	Sample	Sample Size	Number Examined	Number Defective	
				Accept	Reject
8 to 50	Single sample		8	0	1
51 to 280	Single sample		32	1	2
281 to 500	Single sample		50	2	3
501 to 1,200	Single sample		80	3	4
1,201 to 3,200	Single sample		125	5	6
3,201 to 10,000	Single sample		200	8	9
10,001 to 35,000	Single sample		315	12	13
35,000 and above	Single sample		500	18	19

Dated: March 21, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–7601 Filed 3–28–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–03–031]

RIN 1625–AA08

Special Local Regulations for Marine Events; Prospect Bay, Kent Island Narrows, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish permanent special local regulations for the ''Thunder on the Narrows'' boat races, an annual marine event held on the waters of Prospect Bay near Kent Island Narrows, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of Prospect Bay during the event.

DATES: Comments and related material must reach the Coast Guard on or before May 30, 2003.

ADDRESSES: You may mail comments and related material to Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, hand-deliver them to Room 119 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, or fax them to (757) 398–6203. The Auxiliary and Recreational Boating Safety Branch, Fifth Coast Guard District, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: S. L. Phillips, Project Manager, Auxiliary and Recreational Boating Safety Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD05–03–031], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 81/2 by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address

listed under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Each year on the first Saturday and Sunday of August, the Kent Narrows Racing Association sponsors the ''Thunder on the Narrows'' powerboat races. The event consists of 75 Hydroplanes and Jersey Speed Skiffs racing in heats counter-clockwise around a 1.5 mile oval racecourse on the waters of Prospect Bay, Kent Island Narrows, Maryland. A fleet of approximately 200 spectator vessels normally gathers nearby to view the event. Due to the need for vessel control during the races, vessel traffic will be temporarily restricted to provide for the safety of the spectators, participants and transiting vessels.

Discussion of Proposed Rule

The Coast Guard proposes to establish permanent special local regulations on specified waters of Prospect Bay. The special local regulations will be enforced annually from 9:30 a.m. to 6:30 p.m. on the first Saturday and Sunday of August. The effect will be to restrict general navigation in the regulated area during the event. Except for participants in the ''Thunder on the Narrows'' powerboat races and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this proposed regulation will prevent traffic from transiting a portion of Prospect Bay during the event, the effect of this proposed regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly. Additionally, the proposed regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. Vessel traffic will be able to transit Prospect Bay and Kent Narrows by navigating around the regulated area.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Prospect Bay during the event.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This proposed rule would be in effect for only 2 days each year. Vessel traffic could pass safely around the regulated area. Before the enforcement period, we would issue maritime advisories so mariners can adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Assistance for Small Entities

Under section 213 (a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES.**

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3 (a) and 3 (b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that Order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We prepared an ''Environmental Assessment'' in accordance with Commandant Instruction M16475.1D, and determined that this rule will not significantly affect the quality of the human environment. The ''Environmental Assessment'' and ''Finding of No Significant Impact'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 is revised to read as follows:

Authority: 33 U.S.C. 1233 through 1236; Department of Homeland Security Delegation No. 0170, 33 CFR 100.35.

2. Section 100.530 is added to read as follows:

§ 100.530 Prospect Bay, Kent Island Narrows, Maryland

(a) *Definitions.*—(1) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Activities Baltimore.

(2) *Official Patrol.* The Official Patrol is any vessel assigned or approved by Commander, Coast Guard Activities Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Regulated area.* Includes all waters of Prospect Bay enclosed by the following points:

Latitude	Longitude
38°57′52.0″	076°14′48.0″ W, to
38°58′02.0″ N	076°15′05.0″ W, to
38°57′38.0″ N	076°15′29.0″ W, to
38°57′28.0″ N	076°15′23.0″ W, to
38°57′52.0″ N	076°14′48.0″ W.

All coordinates reference Datum NAD 1983.

(b) *Special local regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(c) *Enforcement period.* This section will be enforced annually from 9:30 a.m. to 6:30 p.m. on the first Saturday and Sunday in August. Notice of the enforcement period will be given via Marine Safety Radio Broadcast on VHF–FM marine band radio, Channel 22 (157.1 MHz).

Dated: March 10, 2003.

James D. Hull,

Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 03–7545 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 76 and 78

[MB Docket No. 03–50; FCC 03–37]

Extend Interference Protection for the Marine and Aeronautical Distress and Safety Frequency at 406.025 MHz

AGENCY: Federal Communications Commission

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes to provide interference protection for the international emergency digital distress and safety frequency operating at 406.025 MHz. New Emergency Position Indicated Radio Beacons (EPRIBs) and Emergency Locator Transmitters (ELTs) are using digital signals operating on 406.025 MHz instead of the traditional analog signals which operate on 121.5 and 243.0 MHz. The rules proposed herein will protect the frequency 406.025 MHz from possible interference from cable television systems and multi-channel video program distributor (MVPD) systems operating near this frequency. In addition, the Commission seeks comment on adding a provision to part 78 regarding the cancellation or forfeiture of unused or discontinued Cable Television Relay Service (CARS) licenses. Canceling unused or discontinued CARS licenses will help the Commission conserve and reclaim unused spectrum. Also, in order to keep the rules consistent and up to date, the Commission proposes to streamline and revise certain sections of parts 76 and 78.

DATES: Comments are due on or before April 30, 2003 and reply comments are due on or before May 15, 2003. Written comments by the public on the proposed information collections are due April 30, 2003. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection(s) on or before May 30, 2003.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *jbherman@fcc.gov,* and to Jeanette Thornton, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or

via the Internet to *jthornto@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Sarah Mahmood, Media Bureau at (202) 418–7009 or via Internet at *smahmood@fcc.gov.* For additional information concerning the information collection(s) contained in this NPRM, contact Judith Boley Herman at 202–418–0214, or via the Internet at *jbherman@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–050, adopted February 24, 2003 and released March 5, 2003. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554, and may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com* or may be viewed via internet at *http://www.fcc.gov/mb/.*

1. This Notice of Proposed Rule Making (NPRM) proposes to modify § 76.616 of our rules to include the international digital search and rescue frequency 406.025 MHz within the prohibition on cable system operation near the emergency and distress frequencies. As part of our continual review of our technical rules, this NPRM also proposes streamlining and revising part 76, Multichannel Video and Cable Television Service rules, and part 78, Cable Television Relay Service rules, by eliminating outdated rules, correcting others, and maintaining consistency throughout different Commission Rule parts.

2. The United States, Canada, France, and Russia use COSPAS/SARSAT satellites to detect and locate distress signals from Emergency Position Indicating Radio Beacons (EPIRBs) and Emergency Locator Transmitters (ELTs). Older EPIRBs and ELTs use analog signals and operate on 121.5 MHz and 243.0 MHz. Section 76.616 of our rules is designed to protect the emergency frequencies at 121.5 MHz and 243.0 MHz from interference by cable television systems operating near these frequencies. The Commission adopted rules prohibiting the transmission of carriers or other signal components capable of delivering peak power levels equal to or greater than 10 microwatts (10^{-5} watts) at any point in a cable television system within 100 kHz of the frequency 121.5 MHz and within 50 kHz of the frequency 243.0 MHz.

3. Newer EPIRBs and ELTs use digital signals and operate on 406.025 MHz. Conforming to satellite use, the Commission adopted rules authorizing the use of the frequency 406.025 MHz for EPIRBs in the maritime radio services, aviation radio services, and for Personal Locator Beacons (PLBs). According to the U.S. Coast Guard, EPIRBs operating on the frequency 406.025 MHz account for four times the number of lives saved as 121.5/243.0 MHz EPIRBs and are responsible for only two percent of the total number of false alerts attributed to 121.5/243.0 MHz EPIRBs. This is due in part to the ability of rescue personnel to locate and detect the emergency signal more efficiently using the additional registration information contained in the 406.025 MHz signal that specifically identifies the beacon in distress. As a result, COSPAS/SARSAT announced that it would stop equipping new satellites with 121.5/243.0 MHz processors and plans to establish a date after which any remaining active processors will be turned off. Carriage of the 406.025 MHz EPIRB is already required aboard SOLAS-class merchant vessels and U.S. commercial fishing vessels. The 406.025 MHz EPIRB is also being used aboard recreational vessels at an increasing rate. In light of these special circumstances surrounding the exclusive use of 406.025 MHz as an emergency communication frequency, it is appropriate to consider revising our rules to protect 406.025 MHz against harmful interference by cable television systems and MVPDs.

4. Analog EPIRBs and ELTs designed to transmit on 121.5 MHz and 243.0 MHz transmit amplitude modulated continuous signals with an audio swept tone. The audio swept tone assists Search and Rescue (SAR) personnel by emitting a distinctive aural signal. These signals also provide distress alerting and homing assistance in emergency situations. Digital EPIRBs and ELTs designed to transmit on 406.025 MHz send short digital signals to provide distress alerting in emergencies and use 121.5 MHz to provide homing. The 406.025 MHz digital signal includes information on the type of emergency, the country and identification code of the beacon in distress, and other information to significantly aid SAR operations. In addition, 406.025 MHz distress signals can be stored on-board COSPAS/SARSAT satellites and then later retransmitted to a ground station, thereby eliminating the ''blind spots'' that exist with the older analog 121.5 MHz and 243.0 MHz EPIRBs and ELTs.

5. Lifesaving efforts have been significantly aided by EPIRBs and ELTs operating on 406.025 MHz. The use of 406.025 MHz EPIRBs has been increasing rapidly, particularly as mandatory requirements come into effect. This has led the United States and the international community to consider transitioning to the exclusive use of 406.025 MHz EPIRBs in the near future.

6. We propose to amend § 76.616 of our rules to extend protection to the additional emergency frequency at 406.025 MHz. In light of the special circumstances surrounding the use of this emergency frequency, we propose forbidding the transmission of carriers or other signal components capable of delivering peak power levels equal to or greater than 10 microwatts (10^{-5} watts) at any point in the cable television system within 100 kHz of 406.025 MHz. Prohibiting cable television operation within this limited guard band will not substantially impact current cable television operation, as the closest cable television frequency in use is the color carrier of cable channel 54, which is approximately 800 kHz from 406.025 MHz. We request comment on this proposal.

7. As part of our effort to keep our rules consistent and up to date, we propose the following deletions and updates.

8. We are proposing to eliminate §§ 76.618 and 76.619 because the period allotted for grandfathered cable television operation ended on July 1, 1990. Consequently, we also are proposing to amend § 76.610 to remove the reference to §§ 76.618 and 76.619 found in the last sentence of the rule. In addition, we are deleting Note 2 of § 76.610 because the exclusion of the frequency band 136–137 MHz expired on January 1, 1990. We also propose incorporating § 76.620 into § 76.610 as the requirements under § 76.610 apply to all MVPDs (cable and non-cable).

9. We recognize the need to add a provision to part 78 addressing the cancellation or forfeiture of unused or discontinued CARS licenses. We feel that this provision is necessary to help conserve spectrum and to reclaim unused spectrum. We seek comment on how the cancellation or forfeiture of unused or discontinued CARS licenses should be implemented. We note that § 101.65 addresses the same issue for fixed microwave licenses.

10. We also propose some miscellaneous corrections for various sections of the Commission's Rules as indicated below.

11. Our proposal to expand the safeguard provision to include the international digital emergency distress frequency at 406.025 MHz is intended to

promote ''safety of life and property through the use of wire and radio communication.'' In addition, the elimination of outdated regulations should increase regulatory efficiency.

I. Procedural Matters

A. Initial Regulatory Flexibility Analysis

12. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth below. Written public comments are requested on the IRFA. In order to fulfill the mandate of the Contract with America Advancement Act of 1996 regarding the Final Regulatory Flexibility Analysis, we ask a number of questions regarding the prevalence of small businesses in the affected industries.

13. Comments must be filed in accordance with the same filing deadlines as comments filed in this NPRM, but they must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act.

B. Paperwork Reduction Act

14. This NPRM contains either a proposed information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB comments are due 60 days from date of publication of this NPRM in the **Federal Register**. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

C. Ex Parte—Permit-But-Disclose Proceedings

15. This is a permit-but-disclose notice and comment rule making proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. See generally 47 CFR 1.1202, 1.1203, 1.1206(a).

D. Filing of Comments and Reply Comments

16. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before April 30, 2003, and reply comments on or before May 15, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

17. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

18. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before April 30, 2003, and reply comments on or before May 15, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

19. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form''. A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

20. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail).

21. The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. The Media Bureau contact for this proceeding is Sarah Mahmood at (202) 418–7009, TTY (202) 418–7172, or at *smahmood@fcc.gov.*

22. Parties who choose to file by paper should also submit their comments on diskette. Parties should submit diskettes to Sarah Mahmood, Media Bureau, 445 12th Street SW., Room 4–C824, Washington, DC 20554. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible form using MS DOS 5.0 and Microsoft Word, or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the party's name, proceeding (including the lead docket number in this case MB Docket No. 03–50), type of pleading (comments or reply comments), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, referable in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

23. Written comments by the public on the proposed and/or modified information collections are due April 30, 2003. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before May 30, 2003. In addition to filing comments with the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *jbherman@fcc.gov* and to Jeanette Thornton, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *jthornto@omb.eop.gov.*

II. Initial Regulatory Flexibility Analysis

24. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *NPRM.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* provided in paragraph 17 of the item. The Commission will send a copy of this *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

25. The basis of this *NPRM* is our concern to assess the need to protect the emergency and distress frequency at 406.025 MHz from cable system operations in order to promote the safety of life and property. We also aim to streamline the rules by eliminating outdated regulations and making some minor changes as detailed below.

26. We seek comment on the following objectives which are proposed for consideration in this *NPRM:*

- Whether to provide for the protection of emergency and distress frequency 406.025 MHz by updating § 76.616 to include that frequency in the group of protected frequencies;
- Whether the industry believes that unused or discontinued CARS licenses should be forfeited or cancelled;
- Whether to include signal leakage restrictions among the other requirements within Part 76 listed in § 76.1510 that apply to open video systems;
- Whether to eliminate of §§ 76.618 and 76.619 because the date after which operators on these were grandfathered to continue operations ended on July 1, 1990; and
- Whether to effect the miscellaneous amendments which exclusively involve typographical errors or operations that have become obsolete.

B. Legal Basis

27. The proposed action is authorized under Sections 4, 4(i), 157, 303, 303(g), 303(r), and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 154(i), 157, 303, 303(g), 303(r), 307.

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

28. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules adopted herein. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction'' under Section 3 of the Small Business Act. Under the Small Business Act, a small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA'').

29. A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations. ''Small government jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were approximately 87,525 governmental entities in the United States. This number includes 38,978 counties, cities, and towns: of these, 37,566, or 96%, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96%) are small entities. Below, we further describe and estimate the number of small entity licensees and regulates, including cities, counties, farms, villages, and other small organizations that may be affected by these rules.

30. The rules we adopt as a result of this *NPRM* protect the emergency and distress frequency 406.025 MHz from interference from cable system operations. The nearest cable frequency is a color carrier approximately 800 kHz above the emergency and distress frequency at 406.83 MHz.

31. *Small MVPDs.* SBA has developed a definition of small entities for cable and other program distribution services, which includes such companies generating $12.5 million or less in annual receipts. This definition includes cable system operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. According to the Census Bureau, there were 1,423 such cable and other program distribution services generating less than $12.5 million in revenue. We address below services individually to provide a more precise estimate of small entities.

32. The Commission has developed, with SBA's approval, its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide. Based on our most recent information, we estimate that there were 1439 cable operators that qualified as small cable companies at the end of 1995. Since

then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. The Commission's rules define a ''small system,'' for the purposes of rate regulation, as a cable system with 15,000 or fewer subscribers. The Commission does not request nor does the Commission collect information concerning cable systems serving 15,000 or fewer subscribers and thus is unable to estimate, at this time, the number of small cable systems nationwide.

33. The Communications Act, as amended, also contains a size standard for a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that there are 68,500,000 subscribers in the United States. Therefore, an operator serving fewer than 685,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 685,000 subscribers or less totals approximately 1,450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

34. *Satellite Master Antenna Television Systems (''SMATV'').* The SBA definition of small entities for cable and other program distribution services includes SMATV services and, thus, small entities are defined as all such companies generating $12.5 million or less in annual receipts. Industry sources estimate that approximately 5,200 SMATV operators were providing service as of December 1995. Other estimates indicate that SMATV operators serve approximately 1.5 million residential subscribers as of July 2001. The best available estimates indicate that the largest SMATV operators serve between 15,000 and 55,000 subscribers each. Most SMATV operators serve approximately 3,000–4,000 customers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we believe that a substantial number of SMATV operators qualify as small entities.

35. Open Video System (''OVS''). Because OVS operators provide subscription services, OVS falls within the SBA-recognized definition of cable and other program distribution services. This definition provides that a small entity is one with $ 12.5 million or less in annual receipts. The Commission has certified 25 OVS operators with some now providing service. Affiliates of Residential Communications Network, Inc. (''RCN'') received approval to operate OVS systems in New York City, Boston, Washington, DC and other areas. RCN has sufficient revenues to assure us that they do not qualify as small business entities. Little financial information is available for the other entities authorized to provide OVS that are not yet operational. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

36. Multichannel, Multipoint Distribution Service (''MMDS''). MMDS systems, often referred to as ''wireless cable,'' transmit video programming to subscribers using the microwave frequencies of the MDS and ITFS. In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues of less than $40 million in the previous three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (''BTAs''). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. As noted, the SBA has developed a definition of small entities for program distribution services, which includes all such companies generating $12.5 million or less in annual receipts. This definition includes multipoint distribution services, and thus applies to MDS licensees and wireless cable operators that did not participate in the MDS auction. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of $12.5 million annually. Therefore, for purposes of the IRFA, we find there are approximately 850 small MDS providers as defined by the SBA and the Commission's auction rules.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

37. This NPRM proposes no changes in reporting, recordkeeping or compliance.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

38. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.''

39. We believe that the rules proposed in this NPRM will have a negligible economic effect on all entities regardless of size. The majority of the rule changes proposed in this NPRM include the deletion of outdated rules as well as some corrections for typographical errors and consistency.

40. The revision to § 76.616 concerning operation near certain aeronautical and marine emergency radio frequencies (*i.e.* 406.025 MHz) should have a minimal or negligible effect on small or large entities since all such operations are already well outside of the boundaries defined by the proposed rule. It is in the interest of public safety to protect the digital search and rescue frequency 406.025 MHz; the alternative of not protecting the frequency 406.025 MHz is unacceptable.

41. The revision of § 76.1510 to include signal leakage restrictions for open video systems is also in the interest of public safety, thus the alternative of non-restriction is unacceptable.

42. In this *NPRM* we ask for comment on whether discontinued or unused CARS licenses should be forfeited or cancelled. The alternative would be to leave the CARS licenses as they are, which would result in unused or wasted spectrum as it would not be available for other licensees.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule.

None.

III. Ordering Clauses

43. Pursuant to the authority contained in Sections 4, 4(i), 157, 303, 303(g), 303(r), and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 154(i), 157, 303, 303(g), 303(r), 307, this Notice of Proposed Rule Making is adopted.

44. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Notice of Proposed Rule Making,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 603(a).

45. For further information concerning this NPRM, contact Sarah Mahmood, (202) 418–7009, or Wayne McKee, (202) 418–2355, of the Engineering Division, Media Bureau.

List of Subjects in 47 CFR Parts 76 and 78

Administrative practice and procedure, Cable television, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Parts 76 and 78 of Title 47 of the Code of Federal Regulations as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.5 is amended by revising paragraph (v) and removing the Note to read as follows:

§ 76.5 Definitions.

* * * * *

(v) *Subscriber terminal.* The cable television system terminal to which a subscriber's equipment is connected. Separate terminals may be provided for delivery of signals of various classes. Terminal devices interconnected to subscriber terminals of a cable system must comply with the provisions of part 15 of this Chapter for TV interface devices.

* * * * *

3. Amend § 76.605 as follows:

a. Paragraph (a) introductory text is revised.

b. Paragraph (a)(1)(ii) is revised.

c. Paragraph (a)(6) is revised.

d. Paragraph (a)(7) is revised.

e. Note 3 in paragraph (b) is revised.

The revisions read as follows:

§ 76.605 Technical standards.

(a) The following requirements apply to the performance of a cable television system as measured at any subscriber terminal with a matched impedance at the termination point or at the output of the modulating or processing equipment (generally the headend) of the cable television system or otherwise as noted. The requirements are applicable to each NTSC or similar video downstream cable television channel in the system:

(1) * * *

(ii) Cable television systems shall transmit signals to subscriber premises equipment on frequencies in accordance with the channel allocation plan set forth in the Electronics Industries Association's ''Cable Television Channel Identification Plan, EIA/CEA–542 Revision A, April 2002'' (EIA–542). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 522(a) and 1 CFR Part 51. Cable systems are required to use this channel allocation plan for signals transmitted in the frequency range 54 MHz to 1002 MHz. Copies of EIA–542 Revision A may be obtained from: Global Engineering Documents, 15 Inverness Way East, Englewood, CO., 80112, 1–800–854–7179, *http://www.global.ihs.com.* Copies of EIA–542 Revision A may be inspected during normal business hours at the following locations: Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, or the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC 20001.

* * * * *

(6) The amplitude characteristic shall be within a range of ±2 decibels from 0.75 MHz to 5.0 MHz above the lower boundary frequency of the cable television channel, referenced to the average of the highest and lowest amplitudes within these frequency boundaries. The amplitude characteristic shall be measured at the subscriber terminal.

(7) The ratio of RF visual signal level to system noise shall not be less than 43 decibels. For class I cable television channels, the requirements of this section are applicable only to:

* * * * *

(b) * * *

Note 3: The requirements of this section shall not apply to devices subject to the TV interface device rules under part 15 of this chapter.

* * * * *

4. Section 76.610 is revised to read as follows:

§ 76.610 Operation in the frequency bands 108–137 and 225–400 MHz—scope of application.

The provisions of §§ 76.605(a)(12), 76.611, 76.612, 76.613, 76.614, 76.616, 76.617, 76.1803 and 76.1804 are applicable to all MVPDs (cable and non-cable) transmitting carriers or other signal components carried at an average power level equal to or greater than 10^{-4} watts across a 25 kHz bandwidth in any 160 microsecond period, at any point in the cable distribution system in the frequency bands 108–137 and 225–400 MHz for any purpose. Exception: Non-cable MVPDs serving less than 1000 subscribers and less than 1000 units do not have to comply with § 76.1804(g).

5. Section 76.616 is revised to read as follows:

§ 76.616 Operation near certain aeronautical and marine emergency radio frequencies.

The transmission of carriers or other signal components capable of delivering peak power levels equal to or greater than 10^{-5} watts at any point in a cable television system is prohibited within 100 kHz of the two frequencies 121.500 MHz and 406.025 MHz, and is prohibited within 50 kHz of the two frequencies 156.800 MHz and 243.000 MHz.

§ 76.618 [Removed]

6. Section 76.618 is removed.

§ 76.619 [Removed]

7. Section 76.619 is removed.

§ 76.620 [Removed]

8. Section 76.620 is removed.

9. Section 76.1510 is revised to read as follows:

§ 76.1510 Application of certain Title VI provisions.

The following sections within part 76 shall also apply to open video systems; §§ 76.71, 76.73, 76.75, 76.77, 76.79, 76.1702, and 76.1802 (Equal Employment Opportunity Requirements); §§ 76.503 and 76.504 (ownership restrictions); § 76.981 (negative option billing); and §§ 76.1300, 76.1301 and 76.1302

(regulation of carriage agreements); § 76.611 (signal leakage restrictions); provided, however, that these sections shall apply to open video systems only to the extent that they do not conflict with this subpart S. Section 631 of the Communications Act (subscriber privacy) shall also apply to open video systems.

PART 78—CABLE TELEVISION RELAY SERVICE

10. The authority citation for part 78 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

11. Section 78.19(f)(2)(ii) is revised to read as follows:

§ 78.19 Interference.

* * * * *

(f) * * *

(2) * * *

(ii) Within the rectangular areas defined as follows (vicinity of Denver, CO):

Rectangle 1:
41°30′00″ N. Lat. on the north
103°10′00″ W. Long. on the east
38°30′00″ N. Lat. on the south
106°30′00″ W. Long. on the west

Rectangle 2:
38°30′00″ N. Lat. on the north
105°00′00″ W. Long. on the east
37°30′00″ N. Lat. on the south
105°50′00″ W. Long. on the west

Rectangle 3:
40°08′00″ N. Lat. on the north
107°00′00″ W. Long. on the east
39°56′00″ N. Lat. on the south
107°15′00″ W. Long. on the west

* * * * *

12. Section 78.27(b)(1) is revised to read as follows:

§ 78.27 License conditions.

* * * * *

(b) * * *

(1) The licensee of a CARS station shall notify the Commission in writing when the station commences operation. Such notification shall be submitted on or before the last day of the authorized one year construction period; otherwise, the station license shall be automatically forfeited.

* * * * *

[FR Doc. 03–7556 Filed 3–28–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 032103A]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 1–day Council meeting on April 15, 2003, to consider actions affecting New England fisheries in the U.S. exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, April 15, 2003. The meeting will begin at 8 a.m. on Tuesday.

ADDRESSES: The meeting will be held at the Sheraton Ferncroft, 50 Ferncroft Road, Danvers, MA 01923; telephone 978/777–2500. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council, (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Tuesday, April 15, 2003

Following introductions, the Council will reconsider and finalize Groundfish Amendment 13 to the Northeast Multispecies Fishery Management Plan reference point and rebuilding alternatives and control rules. In considering options, the Council will review rebuilding projections prepared by the Plan Development Team (PDT), and NMFS and peer review reports and add to or reduce the number of alternatives. The Council will also finalize Total Allowance Catch (TAC) management alternatives including defining and controlling directed and incidental catch; review and approval of Groundfish Committee suggestions for clarifying Amendment 13 management measures and finalize alternatives to implement the U.S. Canada Resource Sharing Agreement including the handling of TAC coverages and overages. The Council meeting will adjourn following the conclusion of any other outstanding business.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: March 25, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–7646 Filed 3–28–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 68, No. 61

Monday, March 31, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Privacy Act of 1974; Report of a New System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of new privacy act system of records.

SUMMARY: Notice is hereby given that the United States Department of Agriculture (USDA) proposes to create a new Privacy Act system of records, FCIC–11, entitled ''Loss Adjuster.'' The system will be maintained by the Federal Crop Insurance Corporation (FCIC), a wholly-owned Government Corporation administered by the Risk Management Agency (RMA), an agency of USDA. The primary purpose of the loss adjuster system is to aid in the administration and management of the Federal crop insurance program.

EFFECTIVE DATE: This notice will be adopted without further publication on April 30, 2003 unless modified by a subsequent notice to incorporate comments received from the public. Although the Privacy Act requires only that the portion of the system which describes the ''routine uses'' of the system be published for comment, USDA invites comment on all portions of this notice. Comments must be received by the contact person listed below on or before April 30, 2003.

FOR FURTHER INFORMATION CONTACT: Director, Actuarial Division, Risk Management Agency, 6501 Beacon Drive, Kansas City, Mo 64133, Telephone: (816) 926–6487.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act, 5 U.S.C. 552a, USDA is creating a new system of records, FCIC–11, entitled ''Loss Adjuster'' to be maintained by the Federal Crop Insurance Corporation (FCIC), a wholly-owned Government Corporation administered by the Risk Management Agency (RMA), an agency of USDA.

RMA promotes and regulates sound risk management solutions to improve the economic stability of American agriculture. The Agency is responsible for supervision of the Federal Crop Insurance Corporation (FCIC) and the administration and oversight of programs authorized under the Federal Crop Insurance Act. As an example, the Federal Crop Insurance program covers production losses due to unavoidable causes such as drought, excessive moisture, hail, and wind. Risk Management tools are available to producers through commercial insurance companies that have entered into a financial arrangement with FCIC. Under this agreement, the company agrees to deliver a product to eligible buyers.

The purpose of the loss adjuster system is to identify persons performing loss adjustment services (*i.e.,* performing field inspections, verifying cause of loss, determining total production); detect disparate or inconsistent performance among all loss adjustors; capture data that contains the social security account number of loss adjusters for actuarial purposes in determining risk classification; and analyze and evaluate general program performance at various phases of program delivery. Routine uses include identifying loss adjusters who are ineligible for participation due to disqualification, suspension, debarment or other ineligibility and for other general administrative needs. The system contains records of identification for a loss adjustor to include the name, social security number, loss adjuster code, State, county and private insurance company that insures the policy for which the loss adjustment activities are performed, the individual policy number, state and county, private insurance company, amount of premium collected, and amount of indemnity paid for all applicable losses adjusted by the loss adjuster, and any information relating to any disqualification, suspension, debarment or other ineligibility.

The loss adjuster system is maintained by the Actuarial Division, Research and Development, RMA, Kansas City, Missouri.

A ''Report on New System,'' required by 5 U.S.C. 552a(r), as implemented by OMB Circular A–130, was sent to the Chairman, Committee on Governmental Affairs, United States Senate, the Chairman, Committee on Government Reform, U.S. House of Representatives, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget on March 21, 2003.

Signed at Washington, DC, on March 21, 2003.

Ann M. Veneman,

Secretary of Agriculture.

USDA/FCIC–11

SYSTEM NAME:

Loss Adjuster,

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Kansas City Office, Federal Crop Insurance Corporation, Risk Management Agency, 6501 Beacon Drive, Stop 0814, Kansas City, Missouri 64133–4676 and regional offices for the Federal Crop Insurance Corporation. Addresses of the regional offices may be obtained from the Deputy Administrator, Insurance Services, Risk Management Agency, United States Department of Agriculture, 1400 Independence Avenue, SW, Stop 0805, room 6709–S, Washington, DC 20250–0803.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system consists of information on any individual who is under contract with or employed by a private insurance company reinsured by FCIC and who is authorized to perform loss adjustment and related activities under the laws of the State and the Standard Reinsurance Agreement.

Categories of Records in the System:

The system consists of standardized records containing identifying information on individuals such as name, social security number, loss adjuster code, the State, county and private insurance company that insures the policy for which the loss adjustment activities are performed, and the individual policy number, State and county, private insurance company, amount of premium collected, and amount of indemnity paid for all applicable losses adjusted by the loss adjuster and any information relating to disqualification, suspension, debarment, and any other ineligibility.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. 1501 *et seq.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USES:

Records contained in this system may be used as follows:

(1) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation, or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute or by rule, regulation or order issued pursuant thereto.

(2) Disclosure to a court, magistrate, or administrative tribunal, or to opposing counsel in a proceeding before a court, magistrate, or administrative tribunal, of any record within the system that constitutes evidence in that proceeding, or which is sought in the course of discovery, to the extent that FCIC determines that the records sought are relevant to the proceeding.

(3) Disclosure to a congressional office from the record of an individual in response to any inquiry from the congressional office made at the request of that individual.

(4) Disclosure to private insurance companies to monitor loss adjuster activity, performance, and loss histories and take such corrective action as necessary.

(5) Disclosure to contractors or other Federal agencies to conduct research and analysis to identify patterns, trends, anomalies, instances and relationships of private insurance companies, agents, loss adjusters and policyholders that may be indicative of fraud, waste, and abuse.

(6) Disclosure to private insurance companies, contractors, and other applicable Federal agencies to determine whether information has been accurately provided to FCIC and the private insurance companies and to determine compliance with program requirements.

(7) Disclosure to private insurance companies, contractors, cooperators, partners of FCIC, and other Federal agencies for any purpose relating to the sale, service, administration, analysis, or evaluation of the Federal crop insurance program.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained electronically, on computer printouts and in the file folders at the Kansas City Office.

RETRIEVABILITY:

Records may be indexed and retrieved by name, social security number, and loss adjuster code.

SAFEGUARDS:

Records are accessible only to authorized personnel, on computer printouts and in the file folders at the Kansas City Office. The electronic records are controlled by password protection and the computer network is protected by means of a firewall.

RETENTION AND DISPOSAL:

Electronic records are maintained indefinitely. Hard copy records are maintained until expiration of the record retention period established by the National Archivist.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Actuarial Division, Risk Management Agency, Federal Crop Insurance Corporation, 6501 Beacon Drive, Stop 0814, Kansas City, Missouri 64133–4676. Telephone: (816) 926–6487.

NOTIFICATION PROCEDURE:

An individual may request information regarding this system of records or information as to whether the system contains records pertaining to such individual from the Kansas City Office. The request for information should contain the individual's name, address and social security number. Before information about any record is released, the System Manager may require the individual to provide proof of identity or require the requester to furnish an authorization from the individual to permit release of information.

RECORD ACCESS PROCEDURES:

An individual may obtain information as to the procedures for gaining access to a record in the system, which pertains to such individual, by submitting a written request to the Privacy Act Officer, The Program Support Staff, Room 6620–SB, AG Stop 0821, 1400 Independence Avenue, SW., Washington, DC 20250–0821. The envelope and letters should be marked ''Privacy Act Request.'' A request for information should contain: Name, address, ZIP code, tax identification number social security number, name of the system of records, year of records in question, and any other pertinent information to help identify the file.

CONTESTING RECORD PROCEDURES:

Procedures for contesting records are the same as the procedures for record access. Include the reason for contesting the record and the proposed amendment to the information with supporting documentation to show how the record is inaccurate.

RECORD SOURCE CATEGORIES:

Information in this system comes primarily from the insurance company due to financial arrangement with FCIC (*i.e.* Standard Reinsurance Agreement), or from other Federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–7630 Filed 3–28–03; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request; Form FNS–471, Coupon Account and Destruction Report

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on a proposed revision of a currently approved information collection contained in Form FNS–471, Coupon Account and Destruction Report.

DATES: Written comments must be submitted on or before May 30, 2003.

ADDRESSES: Send comments and requests for copies of this information collection to: Lizbeth Silbermann, Chief, Electronic Benefits Transfer Branch, Benefit Redemption Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be

collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Lizbeth Silbermann, Chief, Electronic Benefits Transfer Branch, (703) 305–2517.

SUPPLEMENTARY INFORMATION:

Title: Coupon Account and Destruction Report.

OMB Number: 0584–0053.

Form Number: FNS–471.

Expiration Date: 03/31/2003.

Type of Request: Revision of a currently approved collection

Abstract: Section 7(d) of the Food Stamp Act of 1977, (7 U.S.C. 2016(d)), requires that State agencies determine and monitor food stamp coupon inventories. Section 7(f) requires that the States are strictly liable for all coupon losses except when the coupons are sent through the mail. The Food Stamp Program regulations at 7 CFR 274.7(f)–(h) require State agencies to properly dispose of certain coupons received at issuance, claims collection, inventory, and bulk storage points. These are destroyed within 30 days after the end of the month in which the coupons are received if the coupons are not suitable for a return to inventories. These include mutilated coupons, improperly manufactured coupons, or old-series coupons being exchanged for current series coupons. Coupons may be returned to local offices if found by the public, returned by recipients as payment on claims, or returned for other reasons. These coupons will likely be destroyed rather than returned to inventories and the FNS–471 is the document used to account for amounts destroyed.

Food Stamp Program coupons are Federal obligations and must be accounted for by denomination and value whether loose or in book form. The FNS–471, Coupon Account and Destruction Report, is completed by staff in local offices and sent to destruction points where the destruction point staff sign the form certifying destruction has occurred. A signed copy is returned to the originating local office. The FNS–471 is attached as documentation to other monthly coupon accountability reports.

Estimate of Burden

The proposed revision to the information collection burden for the FNS–471 reflects a reduction because of the legislated change from paper coupon issuance to electronic benefits transfer (EBT) issuance systems. Currently, just over 90 percent of Food Stamp Program benefits are issued using EBT systems. This leaves a small and declining portion in the form of paper coupons. Coupon issuance declines as State agencies implement Electronic Benefits Transfer (EBT) systems and eliminate coupons. Based on State EBT implementation schedules, there should be no coupon issuance by January 2005. In Fiscal Year 2002, the amount of coupons issued was $2.59 billion, down from $6.2 billion in Fiscal Year 1999 when this collection burden was last renewed. This represents a reduction of about 58 percent. The number of respondents is being reduced using the same percentage from 9,276 to 3,896 respondents. The estimated time per response is 7 minutes to complete the form and the forms are used monthly. The resulting burden hours are 5,454 hours annually.

Affected Public: State and local government employees and recipients.

Estimated Number of Respondents: 3,896.

Estimated Number of Responses per Respondent: 12.

Estimated Time per Response: 7 minutes.

Estimated Total Annual Burden: 5,454 hours annually.

Dated: March 25, 2003.

George A. Braley,

Associate Administrator, Food and Nutrition Service.

[FR Doc. 03–7608 Filed 3–28–03; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold a meeting on April 10, 2003, at the Lake Tahoe Basin Management Unit, Forest Service Office, 870 Emerald Bay Rd., Suite 1, South Lake Tahoe, CA. This Committee, established by the Secretary of Agriculture on December 15, 1998, (64 FR 2876) is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

DATES: The meeting will be held April 10, 2003 beginning at 8:30 a.m. and ending at 10:30 a.m.

ADDRESSES: The meeting will be held at the Lake Tahoe Basin Management Unit, Forest Service Office, 870 Emerald Bay Rd., South Lake Tahoe, CA 96150.

FOR FURTHER INFORMATION CONTACT: Maribeth Gustafson or Jeannie Stafford, Lake Tahoe Basin Management Unit, Forest Service Office, 870 Emerald Bay Road Suite 1, South Lake Tahoe, CA 96150, (530) 573–2642.

SUPPLEMENTARY INFORMATION: The committee will meet jointly with the Lake Tahoe Basin Executives Committee. Items to be covered on the agenda include: Recommendations on the USFS Report to Congress on Urban Intermix Parcel Acquisition and Management in the Lake Tahoe Basin, and public comment. All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: March 24, 2003.

Maribeth Gustafson,

Forest Supervisor.

[FR Doc. 03–7555 Filed 3–28–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

National Tree-Marking Paint Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Tree-marking Paint Committee will meet in Manchester, New Hampshire, on May 6–8, 2003. The purpose of the meeting is to discuss activities, improvements, and concerns related to the handling and use of tree-marking paint by personnel of the Forest Service and the Department of the Interior Bureau of Land Management.

DATES: The meeting will be held May 6–8, 2003, from 8 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Best Western Executive Court Inn,

13500 South Willow Street, Manchester, New Hampshire 03109. Written comments may be mailed before or after the meeting until June 8, 2003, to Bob Monk, Chair, National Tree-marking Paint Committee, Forest Service, USDA, San Dimas Technology and Development Center, 444 East Bonita Avenue, San Dimas, California 91773, or sent via e-mail to: *rmonk@fs.fed.us*.

FOR FURTHER INFORMATION CONTACT: Bob Monk, Project Leader, San Dimas Technology and Development Center, Forest Service, USDA, (909) 599–1267, extension 267; e-mail: *rmonk@fs.fed.us*.

SUPPLEMENTARY INFORMATION: The National Tree-marking Paint Committee comprises representatives from the Forest Service national headquarters, each of the nine Forest Service Regions, the Forest Products Laboratory, the Forest Service San Dimas Technology and Development Center, and the Bureau of Land Management. The General Services Administration and the National Institute for Occupational Safety and Health are ad hoc members and provide technical advice to the committee.

A field trip will be held on May 6 and is designed to supplement information related to tree-marking paint. This trip is open to any member of the public participating in the public meeting on May 7–8. However, transportation is provided only for committee members.

The main session of the meeting, which is open to public attendance, will be held on May 7–8.

Closed Sessions

While certain segments of this meeting are open to the public, there will be two closed sessions during the meeting. The first closed session is planned for approximately 9 a.m. to 11 a.m. on May 7. This session is reserved for individual paint manufacturers to present products and information about tree-marking paint for consideration in future testing and use by the agency. Paint manufacturers also may provide comments on tree-marking paint specifications or other requirements. This portion of the meeting is open only to paint manufacturers, the committee, and committee staff to ensure that trade secrets will not be disclosed to other paint manufacturers or to the public. Paint manufacturers wishing to make presentations to the National Tree-marking Paint Committee during the closed session should contact the Chair at the telephone number listed under **FOR FURTHER INFORMATION CONTACT**. The second closed session is planned for approximately 1 p.m. to 4 p.m. on May 8. This session is reserved for Federal Government employees only.

Any person with special access needs should contact the Chair to make those accommodations. Space for individuals who are not members of the National Tree-marking Paint Committee is limited and will be available to the public on a first-come, first-served basis.

Dated: March 24, 2003.

Gloria Manning,

Associate Deputy Chief, National Forest System.

[FR Doc. 03–7684 Filed 3–28–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Idaho Resource Advisory Committee; Caribou-Targhee National Forest, Idaho Falls, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Caribou-Targhee National Forests' Eastern Idaho Resource Advisory Committee will meet Wednesday, April 30, 2003 in Idaho Falls for a business meeting. The meeting is open to the public.

DATES: The business meeting will be held on April 30, 2003 from 9 a.m. to 3 p.m.

ADDRESSES: The meeting location is the Caribou-Targhee National Forest Headquarters Office, 1405 Hollipark Drive, Idaho Falls, Idaho 83402.

FOR FURTHER INFORMATION CONTACT: Jerry Reese, Caribou-Targhee National Forest Supervisor and Desiganted Federal Officer, at (208) 524–7500.

SUPPLEMENTARY INFORMATION: The business meeting on April 30, 2003, begins at 9 a.m. at the Caribou-Targhee National Forest Headquarters Office, 1405 Hollipark Drive, Idaho Falls, Idaho. Agenda topics will include presentations from project proposals and the resource advisory committee making final funding requests.

Dated: March 24, 2003.

Jerry B. Reese,

Caribou-Targhee Forest Supervisor.

[FR Doc. 03–7593 Filed 3–28–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

South Mt. Baker-Snoqualmie Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The South Mt. Baker-Snoqualmie Resource Advisory Committee (RAC) will meet Thursday, April 17, 2003 in the Forest Supervisor's Office of the Mt. Baker-Snoqualmie National Forest, 21905 64th Avenue West, Mountlake Terrace, WA 98043. The meeting, which is scheduled from 9 a.m. until 12 noon, will involve participation of some advisory committee members by conference telephone. Agenda items to be covered during the meeting: (1) Discussion and agreement on a committee process for 2004 Title II project review and prioritization and (2) identification of a May meeting date for 2004 Title II project evaluation.

All South Mt. Baker-Snoqualmie Resource Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

The South Mt. Baker-Snoqualmie Resource Advisory Committee advises King and Pierce Counties on projects, reviews project proposals, and makes recommendations to the Forest Supervisor for projects to be funded by Title II dollars. The South Mt. Baker-Snoqualmie Resource Advisory Committee was established to carry out the requirements of the Secure Rural Schools and Community Self-Determination Act of 2000.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Penny Sundblad, Management Specialist, USDA Forest Service, Mt. Baker-Snoqualmie National Forest, 810 State Route 20, Sedro Woolley, Washington 98284 (360–856–5700, Extension 321).

Dated: March 25, 2003.

John Phipps,

Designated Federal Official.

[FR Doc. 03–7594 Filed 3–28–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Southwest Idaho Resource Advisory Committee Meeting

AGENCY: USDA, Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393), the Boise and Payette National Forests' Southwest Idaho Resource Advisory Committee will meet for a business meeting.

DATES: Wednesday, April 16, 2003, beginning at 10:30 a.m.

ADDRESSES: The meeting will be held at the Idaho Counties Risk Management Program (ICRMP) building, 3100 South Vista Ave., Boise, Idaho.

FOR FURTHER INFORMATION CONTACT: Randy Swick, Designated Federal Officer, at (208) 634–0401 or electronically at *rswick@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda topics include review and approval of project proposals, and an open public forum. The meeting is open to the public.

Dated: March 25, 2003.

Mark J. Madrid,

Forest Supervisor, Payette National Forest.

[FR Doc. 03–7597 Filed 3–28–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Census Bureau

2003 Company Organization Survey

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing efforts to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 30, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Paul Hanczaryk, Bureau of the Census, Room 2747, Federal Building 3, Washington, DC 20233–6100; telephone (301) 763–4058.

SUPPLEMENTARY INFORMATION:

Abstract

The Census Bureau conducts the annual Company Organization Survey (COS) in order to update and maintain a central, multipurpose Business Register (BR), formerly known as the Standard Statistical Establishment List (SSEL). In particular, the COS supplies critical information on the composition, organizational structure, and operating characteristics of multi-establishment companies.

The BR serves two fundamental purposes:

First and most important, it provides sampling populations and enumeration lists for the Census Bureau's economic surveys and censuses, and it serves as an integral part of the statistical foundation underlying those programs. Essential for this purpose is the BR's ability to identify all known United States business establishments and their parent companies. Further, the BR must accurately record basic business attributes needed to control sampling and enumeration. These attributes include industrial and geographic classifications, and contact information (for example, name and address).

Second, it provides establishment data that serve as the basis for the annual County Business Patterns (CBP) statistical series. The CBP reports present data on number of establishments, first quarter payroll, annual payroll, and mid-March employment summarized by industry and employment size class for the United States, the District of Columbia, Puerto Rico, counties, and county-equivalents. No other annual or more frequent series of industry statistics provides comparable detail, particularly for small geographic areas.

II. Method of Collection

The Census Bureau will conduct the 2003 COS in the same manner as the 2001 COS. (In 2002 the COS was conducted in conjunction with the 2002 Economic Census to minimize response burden). These collections will direct inquiries to approximately 80,000 multi-establishment companies, which operate over 1.1 million establishments. This panel will be drawn from the BR universe of nearly 200,000 multi-establishment companies, which operate 1.6 million establishments.

The mailing list for the 2003 COS will include a certainty component, consisting of all multi-establishment companies with 50 or more employees, and those multi-establishment companies with administrative record values that indicate organizational changes. A non-certainty component will be drawn from the remaining multi-establishment companies based on employment size.

For 2003, electronic reporting will be available to all COS respondents. Companies will receive and return responses by secure Internet transmission. Companies that cannot use the Internet will receive a CD–ROM containing their electronic data. All respondents will be allowed to mail the data via diskette or CD–ROM or submit their response data via the Internet.

The instrument will include inquiries on ownership or control by a domestic parent, ownership or control by a foreign parent, and ownership of foreign affiliates. Further, the instrument will list an inventory of establishments belonging to the company and its subsidiaries, and will request updates to these inventories, including additions, deletions, and changes to information on EIN, name and address, industrial classification, payroll, end-of-year operating status, mid-March employment, first quarter payroll, and annual payroll.

Additionally, the Census Bureau will ask certain questions in the 2003 COS in order to enhance content. We will include questions on the number of leased employees working in the establishments of the company and questions on research and development activities performed by the company.

III. Data

OMB Number: 0607–0444.

Form Number: NC–99001.

Type of Review: Regular submission.

Affected Public: Businesses or other for-profit, not-for-profit institutions.

Estimated Number of Respondents: 80,000 enterprises.

Estimated Time Per Response: 1.76 hours.

Estimated Total Annual Burden Hours: 141,000.

Estimated Total Annual Cost: Included in the total annual cost of the BR, which is estimated to be $10.3 million for fiscal year 2003.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 of United States Code, Sections 182, 195, 224, and 225.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c)

ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 25, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–7540 Filed 3–28–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1271]

Approval for Expansion of Foreign-Trade Zone 84; Houston, TX, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Port of Houston Authority, grantee of Foreign-Trade Zone 84, submitted an application to the Board for authority to expand FTZ 84 to include a site at the Williams Terminals Holdings, L.P., petroleum products terminal (Site 15), located near Galena Park (Harris County), Texas, within the U.S. Customs Service Houston port of entry (FTZ Docket 28–2002; filed June 25, 2002), and,

Whereas, notice inviting public comment was given in the **Federal Register** (67 FR 44172, July 1, 2002), the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 84 is approved, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 21st day of March, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–7689 Filed 3–28–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–830]

Notice of Initiation of Antidumping Duty Investigation: Allura Red from India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Scott Lindsay at (202) 482–0780, or Adina Teodorescu at (202) 482–4052; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Initiation of Investigation

The Petition

On March 4, 2003, the Department of Commerce (the Department) received a petition filed in proper form by Sensient Technologies Corporation (petitioner). *See Allura Red from India: Petition for the Imposition of Antidumping and Countervailing Duties* (*Petition*). The Department received information supplementing the petition on March 17, 2003, and March 19, 2003. *See Response to the Department's Supplemental Questions Regarding the Antidumping and Injury Portions of the Petition Regarding Allura Red from India* (March 17, 2003) (*AD/Injury Supplemental #1*); *Response to the Department's Supplemental Questions Regarding the Antidumping and Injury Portions of the Petition Regarding Allura Red from India* (March 19, 2003) (*AD/Injury Supplemental #2*).

In accordance with section 732(b) of the Act, petitioner alleges that imports of Allura Red from India are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or are threatening material injury to, an industry in the United States.

The Department finds that petitioner filed this petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and has demonstrated sufficient industry support with respect to the antidumping and countervailing duty investigations that it is requesting the Department to initiate. *See Determination of Industry Support for the Petition, below.*

Period of Investigation

In accordance with 19 CFR 351.204(b)(1), the anticipated period of investigation (POI) is January 1, 2002, through December 31, 2002.

Scope of Investigation

This investigation covers Allura Red coloring, also known as Food, Drug and Cosmetic (FD&C) Red No. 40, defined as synthetic red coloring containing not less than 85 percent of the disodium salt of 6-hydroxy-5-{(2-methoxy-5-methyl-4-sulfophenyl)azo}-2-naphthalenesulfonic acid, whether or not certified for human consumption at the time of entry into the United States. The product definition covers all forms and variations of Allura Red, such as powders, press cakes, extrudates, liquid, or granules, but excludes lake pigments formed from Allura Red. This investigation does not cover colors of animal, vegetable, or mineral origin, also known as ''natural colors.''

Allura Red is currently classifiable in the Harmonized Tariff Schedule United States (HTSUS) under subheading 3204.12.5000, a basket category. The tariff classification is provided for convenience and Customs purposes. The written description of the scope of this proceeding is dispositive.

As discussed in the preamble to the Department's regulations, we are setting aside a time period for parties to raise issues regarding product coverage. *See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27323* (May 19, 1997). The Department encourages all parties to submit such comments within 20 days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. *See* section 732(c)(4)(A). Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall either poll the industry or rely on other information in order to determine if there is support for the petition.

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The United States International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding domestic like product (*see* section 771(10) of the Act), they do so for different purposes and pursuant to their separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[1]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

In this petition, petitioner does not offer a definition of domestic like product distinct from the scope of the investigation. Thus, based on our analysis of the information presented to the Department by petitioner, we have determined that there is a single domestic like product, which is defined in the *Scope of Investigation* section above, and have analyzed industry support in terms of this domestic like product.

Finally, the Department has determined that, pursuant to section 732(c)(4)(A) of the Act, the petition contains adequate evidence of industry support and, therefore, polling is unnecessary. *See Antidumping Investigation Initiation Checklist: Allura Red from India*, Industry Support section, March 24, 2003 (*AD Initiation Checklist*), on file in the Central Records Unit, Room B-099 of the main Department of Commerce building.

We determine, based on information provided in the petition, that petitioner has demonstrated industry support representing over 50 percent of total production of the domestic like product, consisting of petitioner and another U.S. producer of Allura Red, Noveon, Inc. Therefore, the domestic producers or workers who support the petitions account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) of the Act are met. Furthermore, because the Department received no opposition to the petition, the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. Thus, the requirements of section 732(c)(4)(A)(ii) are also met. Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See AD Initiation Checklist*.

United States Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which the Department has based its decision to initiate this investigation.

United States Price

Petitioner established U.S. price based on constructed export price (CEP) and export price (EP). For its CEP allegations, petitioner used actual and estimated prices of Allura Red from an Indian producer, through its U.S. affiliate, to unaffiliated U.S. purchasers. In its March 17, 2003, and March 19, 2003, supplemental submissions, petitioner calculated CEP for three actual prices reflecting Free on Board (FOB) warehouse sales of the subject merchandise. *See AD/Injury Supplemental #1* at 1–4 and Attachment B; *AD/Injury Supplemental #2* at 4 and Attachment A. Petitioner also calculated CEP for several prices which were estimated based on the circumstances of lost sales known to petitioner. For each one of these prices, petitioner deducted movement expenses, FDA certification fees, duties, imputed credit, selling expenses, and inventory carrying cost. Since the actual sale prices are sufficient for calculating U.S. price for purposes of initiation, it is not necessary at this time to address whether it is appropriate to include margins based on estimated prices resulting from lost sales.

For EP prices, petitioner calculated U.S. price based on Indian export statistics. Petitioners reported that the HTSUS for Allura Red is in a basket category. Based on our research, we requested clarification regarding the Indian export statistics and whether they are specific to Allura Red, but were unable to determine that the export statistics are specific to the merchandise for which petitioner is alleging dumping. *See AD/Injury Supplemental #1* at 5; *AD/Injury Supplemental #2* at 1–2. Further, petitioner has stated that all imports of the subject merchandise may have been CEP transactions, as it is not aware of any specific EP sales transactions. *See AD/Injury Supplemental #2* at 2. Since questions remain with regard to the EP provided by petitioner and since the actual sale prices provided in the petition are sufficient for calculating U.S. price for purposes of initiation, it is not necessary at this time to address whether it is appropriate to include margins based on EP.

Normal Value

With respect to normal value (NV), petitioner provided a home market price from a domestic price list from Roha Dyechem Pvt., Ltd., an Indian producer of Allura Red. To calculate the NV, petitioner deducted a quantity discount that is noted on the price list. In addition, petitioner adjusted the home

[1] *See Algoma Steel Corp. Ltd., v. United States*, 688 F. Supp. 639, 642-44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefore from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380-81 (July 16, 1991).

market price for imputed credit by deducting home market credit expenses. Petitioner also deducted home market indirect selling expenses as a CEP offset to NV. Finally, for comparison to CEP, petitioner converted the net home market price to U.S. dollars based on the average Federal Reserve exchange rate for the POI.

We are initiating this investigation based on actual U.S. prices of Allura Red from India obtained by petitioners. Based on the comparison of actual U.S. prices to NV, the estimated dumping margins range from 137.69 percent to 226.21 percent. To the extent necessary, we will consider the appropriateness of petitioner's alternative bases for determining U.S. price during the course of this proceeding. Should the need arise to use any of this information as facts available, under section 776 of the Act, in our preliminary or final determinations, we may re-examine the information and revise the margin calculations, if appropriate.

Fair Value Comparisons

Based on the data provided by petitioner, there is reason to believe that imports of Allura Red from India are being, or are likely to be, sold at less than fair value. See Petition.

Allegations and Evidence of Material Injury and Causation

Petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or threatened with material injury, by reason of imports from India of the subject merchandise sold at less than NV. Petitioner contends that the industry's injured condition is evident in the reduced levels of production and capacity utilization, decline in profits, decline in research and development, decreased U.S. market share, lost sales and revenue, and price suppression and depression. The allegations of injury and causation are supported by relevant evidence including lost sales and pricing information. We have assessed the allegations and supporting evidence regarding material injury and causation, and have determined that these allegations are properly supported by accurate and adequate evidence and meet the statutory requirements for initiation. *See AD Initiation Checklist.*

Initiation of Antidumping Investigation

Based on our examination of the petition on Allura Red, and petitioner's responses to our requests for supplemental information clarifying the petition, we have found that the petition meets the requirements of section 732 of the Act. *See AD Initiation Checklist.* Therefore, we are initiating an antidumping duty investigation to determine whether imports of Allura Red from India are being, or are likely to be, sold in the United States at less than fair value. Unless the deadline is extended, we will make our preliminary determination no later than 140 days after the date of this initiation.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the government of India. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as provided for under 19 CFR 351.203(c)(2).

International Trade Commission Notification

Pursuant to section 732(d) of the Act, we have notified the ITC of our initiation.

Preliminary Determination by the ITC

The ITC will determine, no later than April 18, 2003, whether there is a reasonable indication that imports of Allura Red from India are materially injuring, or threatening material injury to, a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: March 24, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–7686 Filed 3–28–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Department of Agriculture—Albany, CA, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, Franklin Court Building, U.S. Department of Commerce, 1099 14th Street, NW., Washington, DC.

Docket Number: 03–007. *Applicant:* U.S. Department of Agriculture, Albany, CA 94710. *Instrument:* Electron Microscope, Model Tecnai G^2 TWIN, G^2 Upgrade, and Accessories. *Manufacturer:* FEI Company, The Netherlands. *Intended Use: See* notice at 68 FR 9984, March 3, 2003. *Order Date:* September 27, 2002.

Docket Number: 03–008. *Applicant:* The Rockefeller University, New York, NY 10021. *Instrument:* Electron Microscope, Model Tecnai G^2 12 BioTWIN. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* See notice at 68 FR 9984, March 3, 2003. *Order Date:* February 22, 2002.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–7688 Filed 3–28–03; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–831]

Notice of Initiation of Countervailing Duty Investigation: Allura Red from India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Sean Carey at (202) 482–3964, or Adina Teodorescu at (202) 482–4052; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Initiation of Investigation

The Petition

On March 4, 2003, the Department of Commerce (the Department) received a petition filed in proper form by Sensient

Technologies Corporation (petitioner). *See Allura Red from India: Petition for the Imposition of Antidumping and Countervailing Duties (Petition).* The Department received information supplementing the petition, on March 17, March 18, and March 19, 2003. *See Response to the Department's Supplemental Questions Regarding the Antidumping and Injury Portions of the Petition Regarding Allura Red from India* (March 17, 2003) *(AD/Injury Supplemental #1); Response to Department's Supplemental Questions Regarding the Subsidy Portion of the Petition Regarding Allura Red from India* (March 18, 2003) *(CVD Supplemental); Response to the Department's Supplemental Questions Regarding the Antidumping and Injury Portions of the Petition Regarding Allura Red from India* (March 19, 2003) *(AD/Injury Supplemental #2).*

In accordance with section 702(b)(1) of the Act, petitioner alleges that manufacturers, producers, or exporters of Allura Red in India receive countervailable subsidies within the meaning of section 701 of the Act.

The Department finds that petitioner filed this petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and has demonstrated sufficient industry support with respect to the antidumping and countervailing duty investigations that it is requesting the Department to initiate. *See Determination of Industry Support for the Petition,* below.

Period of Investigation

In accordance with 19 CFR 351.204 (b)(2), the anticipated period of investigation (POI) is January 1, 2002, through December 31, 2002.

Scope of Investigation

This investigation covers Allura Red coloring, also known as Food, Drug and Cosmetic (FD&C) Red No. 40, defined as synthetic red coloring containing not less than 85 percent of the disodium salt of 6-hydroxy-5-{(2-methoxy-5-methyl-4-sulfophenyl)azo}-2-naphthalenesulfonic acid, whether or not certified for human consumption at the time of entry into the United States. The product definition covers all forms and variations of Allura Red, such as powders, press cakes, extrudates, liquid, or granules, but excludes lake pigments formed from Allura Red. This investigation does not cover colors of animal, vegetable, or mineral origin, also known as ''natural colors.''

Allura Red is currently classifiable in the Harmonized Tariff Schedule United States (HTSUS) under subheading 3204.12.5000, a basket category. The tariff classification is provided for convenience and Customs purposes. The written description of the scope of this proceeding is dispositive.

As discussed in the preamble to the Department's regulations, we are setting aside a time period for parties to raise issues regarding product coverage. *See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27323* (May 19, 1997). The Department encourages all parties to submit such comments within 20 days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

Consultations

In accordance with Article 13.1 of the Agreement on Subsidies and Countervailing Measures and section 702(b)(4)(A)(ii) of the Act, on March 5, 2003, we invited the Government of India (GOI) to hold consultations with us regarding the countervailing duty petition. The GOI declined our offer for consultations. *See Memorandum to the File from Dana S. Mermelstein: Allura Red from India: Petition for the Imposition of Countervailing Duties; Contacts with the Indian Embassy Regarding Consultations,* dated March 24, 2003.

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. *See* section 702(c)(4)(A). Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall either poll the industry or rely on other information in order to determine if there is support for the petition.

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The United States International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding domestic like product (*see* section 771(10) of the Act), they do so for different purposes and pursuant to their separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[1]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

In this petition, petitioner does not offer a definition of domestic like product distinct from the scope of the investigation. Thus, based on our analysis of the information presented to the Department by petitioner, and the information obtained and received independently by the Department, we have determined that there is a single domestic like product, which is defined in the *Scope of Investigation* section above, and have analyzed industry support in terms of this domestic like product.

Finally, the Department has determined that, pursuant to section

[1] *See Algoma Steel Corp. Ltd.,* v. *United States,* 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefore from Japan: Final Determination: Rescission of Investigation and Partial Dismissal of Petition,* 56 FR 32376, 32380–81 (July 16, 1991).

702(c)(4)(A) of the Act, the petition contains adequate evidence of industry support and, therefore, polling is unnecessary. *See Countervailing Duties Investigation Initiation Checklist: Allura Red from India,* Industry Support section, March 24, 2003 (*CVD Initiation Checklist*), on file in the Central Records Unit, room B–099 of the main Department of Commerce building.

We determine, based on information provided in the petition, that petitioner has demonstrated industry support representing over 50 percent of total production of the domestic like product, consisting of petitioner and another U.S. producer of Allura Red, Noveon, Inc. Therefore, the domestic producers or workers who support the petitions account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) of the Act are met. Furthermore, because the Department received no opposition to the petition, the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. Thus, the requirements of section 702(c)(4)(A)(ii) are also met. Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. *See CVD Initiation Checklist.*

Injury Test

Because India is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from India materially injure, or threaten material injury to, a U.S. industry.

Allegations of Subsidies

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition, on behalf of an industry, that (1) alleges the elements necessary for an imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to petitioners supporting the allegations.

We are initiating an investigation of the following programs alleged in the petition to have provided countervailable subsidies to manufacturers, producers and exporters of the subject merchandise in India (a full description of each program is provided in the *CVD Initiation Checklist*):

A. Government of India (GOI) Programs

1. Pre-Shipment and Post-Shipment Export Financing
2. Income Tax Exemption Scheme
3. Advance Licenses
4. GOI Loan Guarantees
5. Export Promotion Capital Goods Scheme (EPCGS)
6. Market Access Initiative (MAI)
7. The Duty Entitlement Passbook Scheme (DEPB)/ Post-Export Credits
8. Exemption of Export Credit from Interest Taxes
9. Re-discounting of Export Bills Abroad (EBR)
10. Special Imprest Licenses

B. Programs in the State of Maharashtra

1. Sales Tax Incentives
2. Capital Incentive Scheme
3. Electricity Duty Exemption Scheme
4. Waiving of Loan Interest by SICOM Limited

C. Program in the State of Uttar Pradesh

Capital Incentive Scheme

We are not including in our investigation the following programs alleged to be benefitting producers and exporters of the subject merchandise in India. The full discussion of our bases for not initiating on these programs is set forth in the *CVD Initiation Checklist:*

A. Government of India (GOI) Programs

1. Special Import Licenses (SILs)
2. Export Processing Zones/Export-Oriented Units Program
3. Income Tax Exemption Scheme (Sections 10A and 10B)
4. Duty Drawback on Excise Taxes
5. Import Duty Exemptions on Capital Equipment Purchases
6. Programs Operated by the Small Industries Development Bank of India
7. Supply of Raw Materials at Subsidized Prices

B. Program in the State of Gujarat

Infrastructure Assistance Scheme

C. Program in the State of Orissa

Subsidies Provided by the State of Orissa

D. Program in the State of Madhya Pradesh

Regional Benefits to New Facilities in Madhya Pradesh

Allegations and Evidence of Material Injury and Causation

Petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or threatened with material injury, by reason of subsidized imports from India of the subject merchandise. Petitioner contends that the industry's injured condition is evident in the reduced levels of production and capacity utilization, decline in profits, decline in research and development, decreased U.S. market share, lost sales and revenue, and price suppression and depression. The allegations of injury and causation are supported by relevant evidence including lost sales and pricing information. We have assessed the allegations and supporting evidence regarding material injury and causation, and have determined that these allegations are properly supported by accurate and adequate evidence and meet the statutory requirements for initiation. *See CVD Initiation Checklist.*

Initiation of Countervailing Duty Investigation

Based on our examination of the petition on Allura Red and petitioner's responses to our requests for supplemental information clarifying the petition, we have found that the petition meets the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters of Allura Red from India receive countervailable subsidies. Unless the deadline is extended, we will make our preliminary determination no later than 65 days after the date of this initiation.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act, a copy of the public version of the petition has been provided to the representatives of the government of India. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as provided for under 19 CFR 351.203(c)(2).

International Trade Commission Notification

Pursuant to section 702(d) of the Act, we have notified the ITC of our initiation.

Preliminary Determination by the ITC

The ITC will determine, no later than April 18, 2003, whether there is a reasonable indication that imports of Allura Red from India are materially injuring, or threatening material injury to, a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: March 24, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–7687 Filed 3–28–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031903B]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold its Coral Reef Ecosystem Plan Team (CREPT), Crustacean Plan Team (CPT) and its Precious Coral Plan Team (PCPT) in Honolulu, HI.

DATES: The meeting of the CREPT will be held on April 16, 2003 through April 17, 2003, from 8:30 a.m. to 5 p.m., each day. The CREPT, CPT and PCPT will hold a joint meeting on April 18, 2003, from 8:30 a.m. to 5 p.m.

ADDRESSES: All meetings will be held at the Western Pacific Fishery Management Council office, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: The CREPT will meet on April 16 and 17, 2003, to discuss the following agenda items:

Wednesday, 16 April 8:30 a.m.

1. Introduction
2. Status of Coral Reef Ecosystem Fishery Management Plan
3. Plan Implementation
4. Development of Annual Reports for Coral Reef Ecosystem Fisheries of the Western Pacific Region
   a. Content of Annual Reports
   b. Review of Fishery Performance Data
   c. Application of MSY Control Rule to the Coral Reef Ecosystem

Thursday, 17 April 8:30 a.m.

5. Inclusion of other coral reef resource information obtained from fishery-dependant and fishery independent sources
   a. Assessment of Essential Fish Habitat (EFH) condition
   b. Ecosystem-level impacts associated with federally regulated fishing activities
   c. Qualitative assessment and ranking of threats to coral reef ecosystems
6. State and territorial management actions
7. Pacific Coral Reef Fisheries Management Workshops
8. Coral Reef Fish Fisheries Stock Assessment Workshop
9. Ecosystem-based Fisheries Management Workshop
10. Other Business

Friday 18 April 8:30 a.m.

The joint CREPT, CPT and PCPT will meet on April 18, 2003 and discuss the following agenda items:

1. Introductions
2. NWHI Sanctuary Designation Process
3. Northwestern Hawaiian Island (NWHI)Science Workshop and Science Symposium
4. 2003 Mariana Archipelago Research Cruise
5. NWHI and Main Hawaiian Island Lobster Research
6. Impacts of invasive soft corals on coral reef ecosystem habitats
7. Other Business

The order in which the agenda items are addressed may change. The Plan Teams will meet as late as necessary to complete scheduled business.

Although non-emergency issues not contained in this agenda may come before the Plan Teams for discussion, those issues may not be the subject of formal action during these meetings. Plan Team action will be restricted to those issues specifically listed in this document and any issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to the meeting date.

Dated: March 25, 2003.

Theophilus R. Brainerd,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–7649 Filed 3–28–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031903C]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a its Bottomfish Plan Team (BPT) and its Pelagics Plan Team (PPT) in Honolulu, HI.

DATES: The meeting of the BPT will be held on April 22 and 23, 2003 and PPT meeting on April 24 and 25, 2003. Both meetings will be held from 8:30 a.m. to 5 p.m. each day.

ADDRESSES: Both meetings will be held at the Council Office Conference Room, Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813; telephone: 808–522–8220.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: The BPT will meet on April 22 and 23, 2003, at the Council Conference Room to discuss the following agenda items:

Tuesday, April 22, 2003, 8:30 a.m.

1. Introduction
2. Annual Report review
   a. Review 2002 Annual Report modules and recommendations
   b. 2002 Annual Report region-wide recommendations
3. Maximum Sustainable Yield Overfishing Definition
   a. Status of stocks based on new definitions
   b. Hapuupuu genetic research
   c. Main Hawaiian Islands area closure monitoring
   d. Rebuilding options for ''overfished'' stocks

Wednesday, 23 April 8:30 a.m.

4. 2003 Marianas Archipelago Research Cruise
   a. Mariana Islands Research Cruise plan
   b. Guam, Division of Aquatics and Wildlife Resources initiatives
   c. Commonwealth of Northern Mariana Islands Division of Fish and Wildlife initiatives
   d. Council initiatives
   e. Cooperative research

5. Guam offshore fishery management Draft amendment
6. Northwestern Hawaiian Islands (NWHI) Bottomfish
a. Mau Zone Community Demonstration Projects Program entry criteria
b. National Ocean Service Sanctuary Designation Process
7. Fishing impacts to Habitats
8. Observer and Monitoring Program NWHI bottomfish observer coverage
9. Other Business

The PPT will meet on April 24 and 25, 2003, at the Council Conference Room to discuss the following agenda items:

1. Introduction
2. Annual Report review
a. Review 2002 Annual Report modules and recommendations
b. 2002 Annual Report region-wide recommendations
3. NMFS Honolulu longline fishing experiments
4. NMFS Turtle sensory physiology workshop
5. Problems and issues from undocumented deployment of fish aggregating devices (FADs) around Hawaii
6. Standardizing longline catch rates for differences in depth and habitat preferences
7. Stock assessments of Pelagic Management Unit Species (PMUS) and overfishing/maximum sustainable yield (MSY) control rules
8. MULTIFAN-CL sensitivity analysis
9. International pelagic fisheries management
10. Other business

The order in which the agenda items are addressed may change. The BPT will meet as late as necessary to complete scheduled business.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, those issues may not be the subject of formal action during these meetings. Plan Team action will be restricted to those issues specifically listed in this document and any issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to the meeting date.

Dated: March 25, 2003.

Theophilus R. Brainerd,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–7651 Filed 3–28–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Public Key Infrastructure (PKI) Certificate Action Form.

Form Number(s): PTO–2042.

Agency Approval Number: 0651–0045.

Type of Request: Extension of a currently approved collection.

Burden: 4,000 hours annually.

Number of Respondents: 8,000 responses per year.

Avg. Hours Per Response: The USPTO estimates that it will take the public approximately 30 minutes (0.5 hours) to read the instructions and Subscriber Agreement, gather the necessary information, prepare the Certificate Action Form, and submit the completed request.

Needs and Uses: In support of the Government Paperwork Elimination Act and its own electronic filing initiatives, the USPTO has implemented Public Key Infrastructure (PKI) technology to support secure electronic commerce between the USPTO and its customers. Customers may submit a request to the USPTO for a digital certificate, which allows the customer to use the encryption keys necessary for electronic identity authentication and secure transactions with the USPTO. The public uses this collection to request a digital certificate, the revocation of a certificate, or the recovery of a lost encryption key. The USPTO uses this collection to process certificate requests and to provide customers with the authorization codes to use the cryptographic software.

Affected Public: Individuals or households, businesses or other for-profits, not-for-profit institutions, farms, the Federal government, and State, local, or tribal governments.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Susan K. Brown, Records Officer, Office of Data Architecture and Services, Data Administration Division, USPTO, Suite 310, 2231 Crystal Drive, Washington, DC 20231, by phone at (703) 308–7400, or by e-mail at *susan.brown@uspto.gov.*

Written comments and recommendations for the proposed information collection should be sent on or before April 30, 2003, to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503.

Dated: March 24, 2003.

Susan K. Brown,

Records Officer, USPTO, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 03–7553 Filed 3–28–03; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit and Sublimit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Belarus

March 25, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection.

EFFECTIVE DATE: March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit and sublimit for Category 622 and sub-Category 622-L, respectively, are being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 68 FR 4181, published on January 28, 2003.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 25, 2003.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 21, 2003, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain man-made fiber textile products, produced or manufactured in Belarus and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on March 31, 2003, you are directed to increase the limit and sublimit for the following category and sub-category, as provided for under the agreement between the Governments of the United States and Belarus dated January 10, 2003:

Category	Twelve-month restraint limit [1]
622	10,101,000 square meters of which not more than 1,665,000 square meters shall be in Category 622-L [2].

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

[2] Category 622-L: only HTS numbers 7019.51.9010, 7019.52.4010, 7019.52.9010, 7019.59.4010, and 7019.59.9010.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.03–7622 Filed 3–28–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination under the African Growth and Opportunity Act (AGOA)

March 25, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Determination.

SUMMARY: The Committee for the Implementation of Textile Agreements (CITA) has determined that handloomed fabric and handmade articles made from such handloomed fabric that are produced in and exported from Swaziland qualify for preferential treatment under Section 112(a) of the African Growth and Opportunity Act (AGOA). Therefore, imports of eligible products from Swaziland with an appropriate AGOA Visa will qualify for duty-free treatment under the AGOA.

EFFECTIVE DATE: April 14, 2003.

FOR FURTHER INFORMATION CONTACT: Anna Flaaten, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION: The African Growth and Opportunity Act (Title I of the Trade and Development Act of 2000, Pub. L. No. 106-2000)(AGOA) provides preferential tariff treatment for imports of certain textile and apparel products of beneficiary sub-Saharan African countries. In a letter to the Commissioner of Customs dated January 18, 2001, the United States Trade Representative directed Customs to require that importers provide an appropriate export visa from a beneficiary sub-Saharan African country to obtain preferential treatment under section 112(a) of the AGOA (66 FR 7837). The first digit of the visa number corresponds to one of 9 groupings of textile and apparel products that are eligible for preferential tariff treatment. Grouping ''9'' is reserved for Handmade, handloomed, or folklore articles.

In Section 2 of Executive Order 13191 of January 17, 2001, the Committee for the Implementation of Textile Agreements is authorized to ''consult with beneficiary sub-Saharan African countries and to determine which, if any, particular textile and apparel goods shall be treated as being handloomed, handmade, or folklore articles'' (66 FR 7272). Consultations were held on March 5, 2003 and CITA has now determined that handloomed fabrics and handmade articles made from such handloomed fabrics produced in and exported from Swaziland are eligible for preferential tariff treatment under section 112(a) of the AGOA. In the letter published below, CITA directs the Commissioner of Customs to allow entry of such products of Swaziland under Harmonized Tariff Schedule provision 9819.11.27, when accompanied by an appropriate export visa in Grouping ''9''.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 25, 2003.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: The Committee for the Implementation of Textiles Agreements (CITA), pursuant to Sections 112(a) of the African Growth and Opportunity Act (Title I of Pub. L. No. 106-200) (AGOA) and Executive Order 13101 of January 17, 2001, has determined that, effective on April 14, 2003, handloomed fabric produced in Swaziland and handmade articles produced in Swaziland from such handloomed fabric shall be treated as being handloomed, handmade, or folklore articles under the AGOA, and that an export visa issued by the Government of Swaziland for Grouping ''9'' is a certification by the Government of Swaziland that the article is handloomed, handmade, or folklore. CITA directs you to permit duty-free entry of such articles accompanied by the appropriate visa and entered under heading 9819.11.27 of the Harmonized Tariff Schedule of the United States.

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–7623 Filed 3–28–03; 8:45 am]

BILLING CODE 3510–DR–S

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Monday, April 7, 2003, 2:30 p.m.

LOCATION: Room 410, Bethesda Towers, 4330 East-West Highway, Bethesda, Maryland.

STATUS: Closed to the Public—Pursuant to 5 U.S.C. 552b(f)(1) and 16 CFR 1013.4(b)(3)(7)(9) and (10) and submitted to the **Federal Register** pursuant to 5 U.S.C. 552b(e)(3).

MATTER TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–7923.

Dated: March 26, 2003.

Todd A. Stevenson,

Secretary.

[FR Doc. 03–7765 Filed 3–27–03; 11:33 am]

BILLING CODE 6355–01–M

DEPARTMENT OF EDUCATION

Proposed Extension of Project Period and Waiver

AGENCY: Office of Special Education Programs, Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed extension of project period and waiver.

SUMMARY: The Secretary proposes to waive the requirements in Education Department General Administrative Regulations (EDGAR), at 34 CFR 75.250 and 75.261(a), that generally prohibit project periods exceeding 5 years and project extensions involving the obligation of additional Federal funds to enable the currently-funded Regional Resource Centers (RRCs) to receive funding from June 1, 2003 until May 31, 2004.

DATES: We must receive your comments on or before April 30, 2003.

ADDRESSES: Address all comments concerning this proposal to Debra Sturdivant or Marie Roane, U.S. Department of Education, 400 Maryland Avenue, SW., room 3527, Switzer Building, Washington, DC 20202–2641. If you prefer to send your comments through the Internet, use the following address:

Debra.Sturdivant@ed.gov or *Marie.Roane@ed.gov*.

FOR FURTHER INFORMATION CONTACT: Debra Sturdivant, Telephone: (202) 205–8038, or Marie Roane, Telephone: (202) 205–8451.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact persons listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding this proposed extension of project period and waiver.

During and after the comment period, you may inspect all public comments about this extension of project period and waiver in room 3727, Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed extension of project period and waiver. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

Background

On February 24, 1998, we published in the **Federal Register** (63 FR 9376–9378) a notice inviting applications for new awards under the Regional Resource Center Program for Fiscal Year 1998. Based on this notice, the Department made six awards of 56 months under 34 CFR 75.105(c)(3) and the Individuals with Disabilities Education Act (IDEA). Section 685 of IDEA authorizes the Secretary to support the establishment of Regional Resource Centers (RRCs). These Centers provide technical assistance and information that support States and local agencies in building capacity to improve early intervention, educational, and transitional services and results for children with disabilities and their families, and address systemic-change goals and priorities. The grant period for the six centers ends May 31, 2003.

In order to carry out activities related to implementing an initiative of the Office of Special Education Programs (OSEP) to identify and disseminate alternative approaches to identifying children with learning disabilities, it is necessary to issue continuation awards to the existing grantees. Specifically, the current RRCs are helping to conduct a survey in each of their regions to collect information on the ways that States identify children with learning disabilities.

In particular, the Secretary plans for the RRCs to work with staff of OSEP, the Kennedy Center Research Program on Learning Accommodations for Individuals with Special Needs at Vanderbilt University, State educational agencies, regional in-state technical assistance systems and other State and local agencies to:

(1) Develop a coordinated plan for identifying sites within each RRC region using alternative approaches for identification of children with learning disabilities;

(2) Assist in efforts to provide or gather evidence of the value of more effective approaches for addressing the needs of children with learning disabilities; and

(3) Use research-based dissemination, training, and technical assistance to extend and increase effective practices in the area of learning disabilities.

The RRCs will also work with centers providing technical assistance to projects funded under the Training and Information for Parents of Children with Disabilities program to continue to foster improved collaboration on the No Child Left Behind Act of 2001 and IDEA, which will improve results for children with disabilities.

In addition, the Secretary plans for the RRCs to provide continued assistance to State educational agencies for Part B and the lead agencies for Part C in each region to support their implementation of continuous improvement and focused monitoring activities.

Reasons

There is an immediate need to provide training and information to the populations that will be targeted by these efforts. Providing continuous support to existing grantees will help ensure the success of these efforts by avoiding the possible disruption or interruption of activities resulting from a change in grantees. Waiting until after a new RRC competition to begin this important work would severely hinder the Department's efforts to address the critical needs that are now present in the regions. The current RRCs have already conducted extensive training and information activities related to State implementation of the IDEA Amendments of 1997 and are best suited to conduct this effort. We have determined that an additional period of time is needed to begin the additional technical assistance and training activities described in this notice.

Therefore, the Secretary proposes to issue continuation awards to the current grantees for twelve (12) months. A one-year time extension beginning June 1,

2003 thru May 31, 2004 is being proposed to ensure the successful completion of the projects. However, to do so, the Secretary must waive the requirements in 34 CFR 75.250 and 75.261(c)(2), which prohibit project periods exceeding 5 years and period extensions that involve the obligation of additional Federal funds. We are proposing a waiver at this time in order to give the affected grantees early notice of the availability of an additional twelve months of funding.

Regulatory Flexibility Act Certification

The Secretary certifies that the proposed waiver and extension of the project period will not have a significant economic impact on a substantial number of small entities. The only small entities that would be affected are the six RRCs.

Paperwork Reduction Act of 1995

This extension and waiver does not contain any information collection requirements.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Electronic Access to This Document

You may view this document, as well as all other

Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.326, Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities.)

Dated: March 25, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–7690 Filed 3–28–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of availability of a Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory, Department of Energy (DOE).

ACTION: Notice of Availability of a Financial Assistance Solicitation.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Solicitation No. DE–PS26–03NT41775 entitled ''Drilling, Completion, and Stimulation (DCS).'' This solicitation is being issued to develop new drilling, completion, and stimulation technologies that will aid the nation in meeting the increasing natural gas demands of the future.

DATES: The solicitation will be available on the ''Industry Interactive Procurement System'' (IIPS) webpage located at *http://e-center.doe.gov* on or about March 28, 2003. Applicants can obtain access to the solicitation from the address above or through DOE/NETL's Web site at *http://www.netl.doe.gov/business*.

ADDRESSES: See **FOR FURTHER INFORMATION CONTACT** caption.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah J. Boggs, Contract Specialist, U.S. Department of Energy, National Energy Technology Laboratory, 3610 Collins Ferry Road, E-mail Address: *dboggs@netl.doe.gov*, Telephone Number: 304–285–4473.

SUPPLEMENTARY INFORMATION: The ''Drilling, Completion, and Stimulation Solicitation'' supports the Strategic Center for Natural Gas 2020 Vision of the U.S. public enjoying benefits (affordable supply, reliable delivery, and environmental protection) from an increase in gas use. The demand for natural gas is expected to grow at a rate of 2.1 percent per year between 1999 and 2020, with the total annual gas consumption projected to increase from 22 tcf in 1999 to 34 tcf in 2020. This increase will put a great strain on the natural gas industry as most of the conventional reservoirs have already been discovered. Therefore, the gas needed to meet the increasing demands will have to come from unconventional sources, which are known to contain vast quantities of gas across large areas and throughout thick columns of strata in many of the nation's basins.

Past assessments of these unconventional resources show that thousands of trillion cubic feet of gas exists in place. However, due to the complexity, depth and lower-quality of these reservoirs, only a small percentage of this gas can be produced economically. Today's operators target areas of high natural fracture density because the extensive fracture network increases the drainage area of wells and thereby, the ultimate recovery of gas. But the majority of wells completed in unconventional reservoirs are sub-economic because a well-connected natural fracture system is the exception rather than the rule. Thus, technologies are needed to both reduce the costs of drilling, completion, and stimulation, and improve the recovery efficiency.

Once released, the solicitation will be available for downloading from the IIPS Internet page. At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function, call the IIPS Help Desk at (800) 683–0751 or E-mail the Help Desk personnel at *IIPS_HelpDesk@e-center.doe.gov*. The solicitation will only be made available in IIPS, no hard (paper) copies of the solicitation and related documents will be made available. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the solicitation package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The actual solicitation document will allow for requests for explanation and/or interpretation.

Issued in Morgantown, WV on March 20, 2003.

Dale A. Siciliano,

Director, Acquisition and Assistance Division.

[FR Doc. 03–7612 Filed 3–28–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC03–714–000, FERC Form No. 714]

Commission Collection Activities, Proposed Collection; Comment Request; Extension & Reinstatement

March 24, 2003.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No.104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments on the collection of information are due by May 29, 2003.

ADDRESSES: Copies of the proposed collection of information can be obtained from Michael Miller, Office of the Executive Director, ED–30, 888 First Street NE., Washington, DC 20426. Comments on the proposed collection of information may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 and should refer to Docket No. 03–714–000.

Documents filed electronically via the Internet can be prepared in a variety of formats, including WordPerfect, MS Word, Portable Document Format, Rich Text Format or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on ''Make an E-filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's e-mail address upon receipt of comments. User assistance for electronic fillings is available at 202–502–8258 or by e-mail to *efiling@ferc.gov*. Comments should not be submitted to this E-mail address.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the FERRIS link. For user assistance, contact *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676 or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873 and by e-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION:

The information collected under the requirements of FERC Form No. 714, ''Annual Electric Control and Planning Area Report'' (OMB No. 1902–0140) is used by the Commission to carry out its responsibilities in implementing the statutory provisions of sections 202, 207, 210, 211–213 of the Federal Power Act (FPA), as amended (49 Stat. 838; 16 U.S.C. 791a–825r) and particularly sections 304, 309 and 311. The Commission implements Form No. 714's filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 141.51.

FERC Form No. 714 gathers basic utility operating and planning information, primarily on a control area basis, for the purpose of evaluating utility operations related to proposed mergers, interconnections, wholesale rate investigations, and wholesale market changes and trends under emerging competitive forces. Such evaluations are made to assess reliability, costs and other operating attributes.

Action: The Commission is requesting a three-year extension. Due to an administrative lapse, Form 714 was allowed to expire. The Commission seeks reinstatement of Form 714.

Burden Statement: Public reporting burden for this information collection is estimated as:

Number of Respondents Annually (1)	Number of Responses Per Respondent (2)	Average Burden (No. of Hours Per Response) (3)	Total Annual Burden (Total No. of Hours) (1) x (2) x (3)
250	1	50	12,500

Estimated cost to respondents: 12,500 hours 2,080 per year × $117,041 = $703,371. The cost per respondent = $2,813. The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purpose of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than anyone particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7584 Filed 3–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–65–000]

Columbia Gas Transmission Corporation; Notice of Application

March 24, 2003.

Take notice that on March 14, 2003, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP03–65–000, pursuant to section 7(b) of the Natural Gas Act (NGA), for permission and approval to abandon by sale to Columbia Natural Resources, Inc., a Texas corporation, certain natural gas pipeline facilities located in West Virginia, and the service provided through such facilities. In addition, Columbia requests that the Commission find the abandoned facilities to be gathering, and therefore exempt from the Commission's jurisdiction, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

The facilities proposed for abandonment by sale is Columbia's Stafford Compressor Station. The Stafford Compressor Station consists of one 360 horsepower Ajax DPC compressor unit and appurtenances and is located in Mingo County, West Virginia. Columbia states that the facilities, constructed in the early 1980's as field gas compression, currently compress local production to pipeline pressure for delivery into Columbia's mainline system. However, Columbia states that the facilities are no longer an integral part of its transmission system and that the long-term needs of its customers will be best served through a divestiture of the facilities. Columbia does not propose the abandonment of any services as a result of the facility abandonment. Columbia proposes to relocate its existing receipt point from the suction side of the compressor station to an existing interconnection located on the discharge side of the station. Columbia notes that the facilities will be sold for their depreciated book cost at the time of closing, estimated to be $347,495.

Any questions regarding the application should be directed to Fredric J. George, Senior Attorney, Columbia Gas Transmission Corporation, P.O. Box 1273, Charleston, West Virginia 22030–0146 at (304) 357–2359.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commissions' final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. The preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: April 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7582 Filed 3–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–364–001, et al.]

Alliant Energy Corporate Services, Inc., et al.; Electric Rate and Corporate Filings

March 24, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Alliant Energy Corporate Services, Inc.

[Docket No. ER03–364–001]

Take notice that on March 20, 2003, Alliant Energy Corporate Services, Inc., (AECS) tendered for filing with the Federal Energy Regulatory Commission (Commission), rate schedule designations required in Order No. 614, FERC Stats. & Reg. ¶ 31,096 (2000), and as conditioned in the Commission's order in Docket No. ER03–364–000 dated February 26, 2003.

AECS requests an effective date of March 1, 2003, for the filed Amendment.

AECS states that a copy of this filing has been served upon the Public Service Commission of Wisconsin, the Iowa Utilities Board, the Illinois Commerce Commission and the Minnesota Public Utilities Commission.

Comment Date: April 10, 2003.

2. Interstate Power & Light Company

[Docket No. ER03–476–001]

Take notice that on March 18, 2003, Interstate Power and Light Company (IPL), amended its request to terminate Rate Schedule FERC No. 120 with the City of Bellevue. IPL renews its request for an April 1, 2003 effective date and indicates that copies of the filing have been provided to the City of Bellevue and to the Iowa Utilities Board.

Comment Date: April 8, 2003.

3. Commonwealth Edison Company

[Docket ER03–630–000]

Take notice that on March 18, 2003, Commonwealth Edison Company (ComEd), submitted for filing with the Federal Energy Regulatory Commission (Commission) an interconnection agreement between ComEd and Grande Prairie Energy, LLC. ComEd requests an effective date for the interconnection agreement of March 18, 2003.

ComEd states that a copy of the filing was served on Grande Prairie Energy, LLC and on the Illinois Commerce Commission.

Comment Date: April 8, 2003.

4. ISO New England Inc.

[Docket No. ER03–631–000]

Take notice that on March 18, 2003, ISO New England Inc. (the ISO), filed with the Federal Energy Regulatory Commission, pursuant to Section 205 of the Federal Power Act, three Bid Mitigation Agreements between ISO New England and (1) Mirant Kendall, LLC; (2) PG&E Energy Trading—Power, L.P.; and (3) Devon Power LLC, Connecticut Jet Power LLC, Middletown Power LLC, Montville Power LLC, and Norwalk Harbor Power, LLC.

The ISO states that copies of said filing have been served upon all parties to this proceeding, upon NEPOOL Participants, and upon all non-Participant entities that are customers under the NEPOOL Open Access Transmission Tariff, as well as upon the utility regulatory agencies of the six New England States.

Comment Date: April 8, 2003.

5. Commonwealth Edison Company

[Docket No. ER03–632–000]

Take notice that on March 18, 2003, Commonwealth Edison Company (ComEd) submitted to the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation effective February 20, 2003, for Substitute Original Service Agreement No. 609, Second Revised Tariff No. 5 with Midwest Generation, LLC.

ComEd states that notice of the proposed cancellation has been served on Midwest Generation, LLC and the Illinois Commerce Commission.

Comment Date: April 8, 2003.

6. Commonwealth Edison Company

[Docket No. ER03–633–000]

Take notice that on March 18, 2003, Commonwealth Edison Company (ComEd) submitted to the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation effective March 7, 2003, for Service Agreement No. 517, Second Revised Tariff No. 5 with Duke Energy Kankakee, LLC.

ComEd states that notice of the proposed cancellation has been served on Duke Energy Kankakee, LLC and on the Illinois Commerce Commission.

Comment Date: April 8, 2003.

7. San Diego Gas & Electric Company

[Docket No. ER03–634–000]

Take notice that on March 19, 2003, San Diego Gas & Electric Company (SDG&E) tendered for filing its First Revised Service Agreements Nos. 15 and 16 to SDG&E's FERC Electric Tariff, First Revised Volume No. 6, incorporating revisions to the Expedited Interconnection Facilities Agreement and Interconnection Agreement with CalPeak Power—El Cajon LLC (CalPeak) respectively. SDG&E states that the Revised Service Agreement No. 15 provides for the situation in which it would be determined that SDG&E's receipt of payments from CalPeak for the installation of the SDG&E interconnection facilities constitutes income to SDG&E that is subject to taxation, and further clarifies terms pertaining to creditworthiness requirements of CalPeak and the guarantor of CalPeak's financial obligations as contemplated by Section 10.22. SDG&E indicate that Revised Service Agreement No. 16 is being filed in executed form, whereas the original was filed in unexecuted form, without substantive changes.

SDG&E requests an effective date of April 27, 2002 for the Revised Service Agreements.

SDG&E states that copies of the filing have been served on CalPeak and on the California Public Utilities Commission.

Comment Date: April 9, 2003.

8. Bangor-Hydro-Electric Company

[Docket No. ER03–635–000]

Take notice that on March 19, 2003, Bangor Hydro-Electric Company (BHE) filed a Pre-Construction Agreement between BHE and Brascan Energy Marketing, Inc., (BEMI) for the BEH/Great Northern Paper Company—Millinocket 115 kV Interface Project as well as the First Amendment to the Pre-Construction Agreement. BHE requests an effective date of October 25, 2002, for the filing.

Comment Date: April 9, 2003.

9. Commonwealth Edison Company

[Docket No. ER03–636–000]

Take notice that on March 19, 2003, Commonwealth Edison Company (ComEd) submitted to the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation effective February 19, 2003, for Service Agreement No. 554, Second Revised Tariff No. 5, with Granite Power Partners II, L.P.

ComEd states that notice of the proposed cancellation has been served on Granite Power Partners II, L.P. and the Illinois Commerce Commission.

Comment Date: April 9, 2003.

10. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–637–000]

Take notice that on March 20, 2003, the Midwest Independent Transmission System Operator, Inc., (Midwest ISO) pursuant to section 205 of the Federal Power Act and section 35.12 of the Federal Energy Regulatory Commission's regulations, submitted for filing an Interconnection and Operating Agreement among New London Municipal Utilities and Interstate Power and Light Company, a wholly owned subsidiary of Alliant Energy Corporation.

Midwest ISO states that a copy of this filing was sent to New London Municipal Utilities and Interstate Power and Light Company, a wholly owned subsidiary of Alliant Energy Corporation.

Comment Date: April 10, 2003.

11. El Paso Electric Company

[Docket No.ER03–638–000]

Take notice that on March 20, 2003, El Paso Electric Company (EPE) tendered for filing a Transaction Agreement between EPE and Southwestern Public Service Company. EPE seeks an effective date of January 1, 2002.

Comment Date: April 10, 2003.

12. Southern California Edison Company

[Docket No. ER03–639–000]

Take notice that on March 20, 2003, Southern California Edison Company (SCE) tendered for filing a Letter Agreement between SCE and the City of Colton (Colton).

SCE states that the purpose of the Letter Agreement is to provide an interim arrangement pursuant to which SCE will commence the engineering, design, and procurement of material and equipment for, and construction of certain facilities necessary to interconnect the Project to Colton's distribution system.

SCE also states that copies of this filing were served upon the Public Utilities Commission of the State of California and Colton.

Comment Date: April 9, 2003.

13. Mirant Las Vegas, LLC; Duke Energy Moapa, LLC; GenWest, LLC; Las Vegas Cogeneration II, LLC; Reliant Energy Bighorn, LLC

[Docket No. TX03–1–000]

Take notice that on March 17, 2003, Mirant Las Vegas, LLC, Duke Energy Moapa, LLC, GenWest, LLC, Las Vegas Cogeneration II, LLC and Reliant Energy Bighorn, LLC (collectively, Applicants) tendered for filing an application for an order directing the establishment of physical interconnection of facilities pursuant to Sections 210 and 212 of the Federal Power Act, 16 U.S.C. 824(I) and (k), and Rules 204 and 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.204 and 385.206.

Applicants request that the Commission issue an order directing the Los Angeles Department of Water and Power (LADWP), Nevada Power Company, the United States Department of the Interior, Bureau of Reclamation and the Salt River Project, as co-owners of the McCullough Substation located in southern Nevada, to establish an interconnection, on reasonable terms and conditions, between their transmission systems and the Applicants via a physical connection with the Nevada Power transmission system at the McCullough Substation, and to provide Applicants with transmission credits associated with upgrades to the McCullough Substation. The Applicants also request that the Commission consolidate this Application with proceedings in Docket Nos. ER02–1741–000 and ER02–1742–000.

Comment Date: April 16, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7583 Filed 3–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Applications for Surrender of Exemptions and Soliciting Comments, Motions To Intervene, and Protests

March 24, 2003.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Applications:* Surrender of Conduit Exemptions.

b. *Project Nos.:* 8434–001, 9007–002, and 9008–002.

c. *Date Filed:* March 6, 2003.

d. *Applicant:* Los Angles County Department of Public Works.

e. *Names of Projects:* West Coast Basin Barrier, Dominguez Gap Barrier, and Alamitos Barrier.

f. *Location:* Pressure Reduction Stations, in the Cities of El Segundo, Carson, and Long Beach, in Los Angeles County, California.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Shem Hawes, Los Angeles County Department of Public Works, Water Resources Division, 900 South Fremont Avenue, Alhambra, CA 91803–1331, (626) 458–6189.

i. *FERC Contact:* Regina Saizan, (202) 502–8765.

j. *Deadline for filing motions to intervene, protests, comments:* April 25, 2003.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

k. *Description of Proposed Action:* The Applicant seeks to surrender the conduit exemptions and to decommission the plants because of the significantly decreased demand for imported water at the barriers and the consequent decrease in the efficiency of the plants.

P–8434 consists of: (1) A single Francis turbine-generator unit with an installed capacity of 950 kW located at the West Coast Basin Service Connection No. 28, an underground pressure reducing station vault used for the distribution of water, (2) an inlet gate valve, (3) control panel, and (4) switch gear.

P–9007 consists of: (1) A reaction type turbine-generator unit with an installed capacity of 250 kW located at the West Coast Basin Service Connection No. 37, an underground pressure reducing station vault used for the distribution of water, (2) a control panel, (3) a control valve, (4) and a switch and metering box.

P–9008 consists of: (1) A reaction type turbine-generator unit with an

installed capacity of 200 kW located at the Central Basin Service Connection No.44, an underground pressure reducing station vault used for the distribution of water, (2) a control panel, (3) a control valve, (4) and a switch and metering box.

l. The filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item h.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7586 Filed 3–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM01–8–000 and ER02–2001–000]

Revised Public Utility Filing Requirements, Electric Quarterly Reports; Notice of Electric Quarterly Reports Workshop

March 24, 2003.

On April 25, 2002, the Commission issued Order No. 2001,[1] a final rule which requires public utilities to file Electric Quarterly Reports. Order 2001–C, issued December 18, 2002, instructs all public utilities to file these reports using Electric Quarterly Report Submission Software, beginning with the report due on or before January 31, 2003 (extended to February 21, 2003). In addition, the Commission has provided public access to Electric Quarterly Reports (EQR) data using the Commission's Web site at *http://www.ferc.gov* /Electric/eqr/eqr.htm. This notice announces a workshop to be held Friday, April 11, 2003, at 9:30 a.m., at FERC headquarters, 888 First Street, NW., Washington, DC.

At the workshop, Commission staff will:

- Demonstrate improvements made to the EQR Submission System which have been put in place for the first quarter 2003 filing;
- Discuss lessons learned during the first quarter filing period;
- Solicit input from interested parties on suggested improvements to the EQR Submission System and possible additions to the list of available Product Names;
- Solicit input from interested parties and data users regarding the EQR Dissemination System, discuss existing system plans and demonstrate some of the preliminary components of the EQR Dissemination System.

All interested parties are invited to attend. There is no registration fee. The workshop will be held in the Commission Meeting Room, Room 2C, and is expected to last up to four hours. In addition, for those unable to attend in person, limited access to the workshop will be available via the Internet using WebEx at no cost to participants. (For more information on WebEx, *see* http://www.webex.com.) Instructions on registering for the workshop using WebEx will be detailed in a future Notice. Interested parties wishing to file comments may do so under the above-captioned Docket Numbers by April 28, 2003. Filings will be placed in the Federal Energy Regulatory Record Information System (FERRIS) data base which is accessible to everyone through the Commission Web site. These filings will be available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

For additional information, please contact Barbara Bourque of FERC's Office of Market Oversight & Investigations at 202–502–8338 or by e-mail, *barbara.bourque@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7587 Filed 3–28–03; 8:45 am]

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[1] Revised Public Utility Filing Requirements, Order No. 2001, 67 FR 31043, FERC Stats. & Regs. ¶ 31,127 (April 25, 2002); reh'g denied, Order No. 2001–A, 100 FERC ¶ 61,074, reconsideration and clarification denied, Order No.2001–B, 100 FERC ¶ 61,342 (2002).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Membership of Performance Review Board for Senior Executives (PRB)

March 24, 2003.

The Federal Energy Regulatory Commission hereby provides notice of the membership of its Performance Review Board (PRB) for the Commission's Senior Executive Service (SES) members. The function of this board is to make recommendations relating to the performance of senior executives in the Commission. This action is undertaken in accordance with Title 5, U.S.C. 4314(c)(4). The

Commission's PRB will include the following new member: William F. Hederman.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7585 Filed 3–28–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–FRL–7475–2]

Beaches Environmental Assessment and Coastal Health Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of grants for implementation of Coastal Recreation Water Monitoring and Public Notification under the Beaches Environmental Assessment and Coastal Health Act.

SUMMARY: The Beaches Environmental Assessment and Coastal Health Act (BEACH Act) signed into law on October 10, 2000, amends the Clean Water Act (CWA), incorporating provisions to reduce the risk of illness to users of the Nation's recreational waters. The BEACH Act authorizes the U.S. Environmental Protection Agency (EPA) to award program development and implementation grants to eligible States, Territories, Tribes, and local governments to support microbiological testing and monitoring of coastal recreation waters, including the Great Lakes, that are adjacent to beaches or similar points of access used by the public. BEACH Act grants also provide support for development and implementation of programs to notify the public of the potential exposure to disease-causing microorganisms in coastal recreation waters. EPA encourages coastal States and Territories to apply for BEACH Act Grants for Program Implementation (referred to as Implementation Grants) to implement effective and comprehensive coastal recreation water monitoring and public notification programs.

DATES: Submit your application on or before June 30, 2003.

ADDRESSES: You must send your application to the appropriate Regional Grant Coordinator listed in this notice under **SUPPLEMENTARY INFORMATION** Section VII.

FOR FURTHER INFORMATION CONTACT: Charles Kovatch, 202–566–0399

SUPPLEMENTARY INFORMATION:

I. Grant Program

What Is the Statutory Authority for the Implementation Grants?

The general statutory authority for BEACH grants is section 406(b) of the CWA as amended by the BEACH Act, Public Law 106–284, 114 Stat. 970 (2000). It provides: ''The Administrator may make grants to States and local governments to develop and implement programs for monitoring and notification for coastal recreation waters adjacent to beaches or similar points of access that are used by the public.'' Section 406(b)(2)(A), however, limits EPA's ability to award implementation grants. It provides that the ''Administrator may make grants to States and local governments to implement a monitoring and notification program if ''

(i) The program is consistent with the performance criteria published by the Administrator under subsection (a);

(ii) The State or local government prioritizes the use of grant funds for particular coastal recreation waters based on the use of the water and the risk to human health presented by pathogens or pathogen indicators;

(iii) The State or local government makes available to the Administrator the factors used to prioritize the use of funds under clause (ii);

(iv) The State or local government provides a list of discrete areas of coastal recreation waters that are subject to the program for monitoring and notification for which the grant is provided, and specifies any coastal recreation waters for which fiscal constraints will prevent consistency with the performance criteria under subsection (a); and

(v) The public is provided an opportunity to review the program through a process that provides for public notice and an opportunity for comment.

What Activities Are Eligible for Funding Under the Development Grants in Fiscal Year 2003?

In Fiscal Year 2003, EPA intends to award grants authorized under the BEACH Act to eligible States and Territories to support the implementation of coastal recreation water monitoring and public notification programs that are consistent with EPA's required performance criteria for grants. The required performance criteria for grants were published by EPA on July 19, 2002 in the document, *National Beach Guidance and Required Performance Criteria for Grants,* (document number: EPA–823–B–02–004). A notice of availability of the required performance criteria for grants was published in the **Federal Register** (67 FR 47540). This performance criteria document is available on EPA's Web site at *http://www.epa.gov/waterscience/beaches/grants.* Copies of the document can also be obtained by writing, calling, or e-mailing: Office of Water Resources Center, U.S. Environmental Protection Agency, Mail Code 4100T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. (Phone: 202–566–1731 or e-mail: *center.water-resource@epa.gov*).

II. Funding and Eligibility

Who Is Eligible to Apply for Implementation Grants Under This **Federal Register** *Notice?*

Coastal and Great Lake States that meet the requirements of Section 406(b)(2)(A) are eligible for implementation grants in FY 2003 to implement monitoring and notification programs. The term ''State'' is defined in section 502 of the CWA to include the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands. However, the Trust Territory of the Pacific Islands no longer exists. The Marshall Islands, the Federated States of Micronesia, and Palau, which were previously entities within the Trust Territory of the Pacific Islands, have entered into Compacts of Free Association with the Government of the United States. As a result, each is now a sovereign, self-governing entity and, as such, is no longer eligible to receive grants as a Territory or possession of the United States.

Are Local Governments Eligible for Funding?

The BEACH Act authorizes EPA to make a grant to a local government for implementation of a monitoring and notification program only if, after the one-year period beginning on the date of publication of performance criteria, EPA determines that the State is not implementing a program that meets the requirements of section 406(b) of the Act. EPA published performance criteria on July 19, 2002. Therefore, July 20, 2003 is the earliest date local governments would be eligible for implementation grants.

Local governments can contact the appropriate EPA Regional office for information about BEACH Act grants, including, after July 20, 2003, a list of States and Territories, if any, that EPA has determined are not implementing

programs consistent with section 406(b) of the BEACH Act. *See* Section VII for a list of EPA Regional grant coordinators.

Are Tribal Governments Eligible for Funding?

Section 518(e) of the CWA authorizes EPA to treat eligible Indian Tribes in the same manner as States for the purpose of receiving CWA section 406 grant funding. In order to receive BEACH Act grant funds a Tribe must have coastal recreation waters (defined in part as waters designated under CWA section 303(c) for use for swimming, bathing, surfing or similar water contact activities), and beaches or similar points of public access adjacent to these waters. In addition, a Tribe must meet the ''treatment in the same manner as a State'' criteria under CWA section 518(e) to receive grant funds under section 406 of the CWA. EPA believes that currently no Tribes meet the requirements for CWA section 406 grant funding.

How Much Funding Is Available?

For Fiscal Year 2003, EPA expects to award approximately $ 9.935 million in Implementation Grants to eligible States and Territories.

How Will the Funding Be Allocated?

For this first year of the Implementation Grants, EPA expects to award grants to all eligible States and Territories who apply for funding based on an allocation formula that EPA developed for allocating BEACH Act grant funds in 2002. EPA consulted with various States, the Coastal States Organization, and Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) to develop this formula which uses three factors that are readily available and verifiable: (1) Length of beach season, (2) miles of beach and (3) number of people that use the beaches.

(1) Beach Season Length

Beach season length was selected as a factor since it determines the part of the year that a government would conduct its monitoring program. The longer the beach season, the more resources a government would need to conduct monitoring. EPA's information on the length of a beach season was obtained from the National Health Protection Survey of Beaches for the States or Territories that reported information. The beach season length for American Samoa, Oregon, Puerto Rico, and Northern Mariana Islands was estimated based on season reported by nearby States and Territories. The beach season length for Alaska was estimated based on air and water temperature, available information on recreation activities, and data from the 1993 National Water Based Recreation Survey. EPA grouped the States and U.S. Territories into four categories of beach season lengths:

For beaches in—	The beach season category is—
Alaska	<3 months.
Connecticut, Delaware, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Virginia, Washington, Wisconsin.	3–4 months.
Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina months	5–6.
American Samoa, California, Florida, Guam, Hawaii, Northern Mariana, Puerto Rico, Texas, U.S. Virgin Islands	9–12 months.

(2) Beach Miles

Miles of beach was selected as a factor because it determines the geographical extent over which a government would conduct monitoring. The longer the miles of beaches, the more resources a government would need to conduct monitoring. For this first year of Implementation Grants, EPA is using shoreline miles as a surrogate rather than beach miles because beach miles are not available for all beaches in the 35 eligible States and Territories. EPA has discussed the drawbacks of using this surrogate factor with States. The shoreline miles data overestimates beach miles in some States, however, EPA and States agreed that this is the best beach estimate available at this time. States have yet to provide EPA with complete information identifying their coastal recreation waters and beaches. Thus, as a practical matter, EPA could not use beach miles in the allocation formula for FY 2003 grants. Instead, for FY 2003 grants, EPA used the NOAA publication *The Coastline of the United States* to quantify the shoreline miles. As a grant condition required by the BEACH Act, States must identify their coastal recreation waters and beaches. States must also report to EPA, as a condition of their FY 2003 grants, latitude, longitude and mileage data on:(1) The extent of beaches and similar points of public access adjacent to coastal recreation waters, and (2) the extent of beaches that are monitored. States should submit this information by October 31, 2003. Therefore, in future years, EPA will be able to measure and thus use beach miles rather than shoreline.

(3) Beach Use

Beach use was selected as a factor because it reflects the importance of beach-related tourism to the local economy. Greater beach use makes it more likely that a government would need to conduct increased monitoring because of the larger number of people potentially exposed to pathogens. For this first year of Implementation Grants, EPA is using the coastal population of counties that are wholly or partially within the State's or Territory's legally defined coastal zone as a surrogate, rather than beach usage, because information on beach visitors is not available for all beaches in the 35 eligible States and Territories. EPA discussed the drawbacks of using this surrogate factor with States, and several were doubtful that EPA could develop a consistent, verifiable approach for estimating beach use for all beaches. However, these States could not suggest a better way to quantify this factor at present. EPA is committed to working with the States and Territories that receive BEACH Act grants to develop a better way to quantify this factor. EPA used the 2000 Census data to quantify coastal population.

The grants allocation formula consists of the sum of three parts. The first part provides a base amount for all States and Territories that varies with the length of the beach season. The second part distributes 50% of the total remaining funds based on the ratio of shoreline miles in a State or Territory to the total length of shoreline miles. For example, if a State has 4% of the total coastal and Great Lakes shoreline, that State would receive 4% of 50% which is 2% of the total funds remaining after the funds for the beach season length are distributed. The third part distributes 50% of the total remaining funds based on the ratio of coastal population in a State or Territory to the total coastal population. For example, if a State has 2% of the total coastal and Great Lakes population, that State

would receive 2% of 50% which is 1% of the total funds remaining after the funds for the beach season length are distributed. The following table summarizes the allocation formula:

For the factor—	The part of the allocation is—
Beach season length	<3 months: $150,000 (States and Territories with a season. <3 months receive season-based funding only.). 3–4 months: $200,000. 5–6 months: $250,000. >6 months: $300,000.
Shoreline miles	50% of funds remaining after allocation of season-based funding.
Coastal population	50% of funds remaining after allocation of season-based funding.

For 2003, the total funds available for BEACH Act grants is $9.935 million, which is $10 million less an overall reduction of 0.65%. In computing the allocation formula, EPA used a total amount of $10 million to compute the funds for each state and Territory, and then applied a 0.65% reduction across all States and Territories. EPA believes that this approach more closely follows the intent of EPA's appropriation act because the President's budget request for FY 2003 included $10 million for BEACH Act grants, but only $9.935 million is actually available to EPA under its appropriation act, which reflects a reduction of 0.65%. Based on this allocation calculation, the amount of each State or Territory's implementation grant award in FY 2003 is expected to be from $149,0250 to $544,552 if all 35 eligible States and Territories apply. EPA anticipates that all 35 eligible governments will apply. If fewer than 35 States and Territories apply for the allocated amount, or meet the required performance criteria for award of an implementation grant, then EPA will distribute available grant funds to States and Territories in the following order of priority:

(1) States that have met the requirements for implementation grants will receive the full amount of funds based on the allocation formula.

(2) EPA may award grants for continued program development to States that have not met the requirements for implementation grants. Any program development grants awarded will be for the limited purpose of supporting completion of work that may be needed to qualify for implementation grants. Therefore, grants for continued program development (if any) are expected to be lower than the amount allocated for program implementation grants.

(3) EPA may award program implementation grants after July 20, 2003 to local governments in States that EPA has determined have not met the requirements for implementation grants.

(4) EPA may award any remaining funds to States that have met the requirements for implementation grants using the criteria in the allocation formula.

If all 35 eligible States and Territories apply and meet the requirements for implementation grants, the distribution of the $ 9.935 million in funds for year 2003 will be:

For the State or Territory of—	The year 2003 allocation is—
Alabama	$261,514
Alaska	149,025
American Samoa	300,364
California	532,164
Connecticut	223,921
Delaware	210,299
Florida	544,552
Georgia	287,442
Guam	300,860
Hawaii	322,897
Illinois	245,043
Indiana	204,963
Louisiana	380,052
Maine	257,766
Maryland	273,429
Massachusetts	257,453
Michigan	283,360
Minnesota	203,309
Mississippi	256,481
New Hampshire	203,594
New Jersey	282,586
New York	359,215
North Carolina	305,007
Northern Mariana	301,648
Ohio	224,227
Oregon	229,757
Pennsylvania	223,012
Puerto Rico	328,757
Rhode Island	212,340
South Carolina	298,726
Texas	387,508
U.S. Virgin Islands	301,483
Virginia	281,693
Washington	274,585
Wisconsin	225,970

What Is the Expected Duration of the Funding and Project Periods?

The expected funding and project period for Implementation Grants awarded in FY 2003 is one year.

Are Matching Funds Required?

Recipients are not required to provide matching funds for Implementation Grants awarded under authority of the BEACH Act at this time. EPA will consider establishing a match requirement in the future based on a review of State program activity and funding levels.

What if a State Cannot Use All of Its Allocation?

If a State or Territory cannot use all of its allocation, the Regional Administrator may award the unused funds to any eligible coastal or Great Lake grant recipient(s) in the Region for the continued development or implementation of their coastal recreation water monitoring and notification program(s). If after this re-allocation, there are still unused funds within the Region, EPA-Headquarters will redistribute these funds for award to any eligible coastal or Great Lake grant recipient(s).

III. Requirements for Implementation Grants

As discussed in Section I of this notice, EPA may only award implementation grants to States and local governments if the state or local government meets five statutory requirements, one of which is that the state or local program be consistent with the performance criteria published by EPA. In drafting the performance criteria, EPA included the remaining four statutory requirements in the performance criteria. Therefore, if a state or local program is consistent with the performance criteria, then the state or local government should also have met the remaining four statutory requirements for implementation grants. In order for EPA to determine that a state or local government is eligible for an implementation grant, documentation that programs are consistent with the performance criteria must be submitted with applications for implementation grants.

IV. Eligible Activities

Recipients may use funds for activities to support implementing a program that is consistent with the required performance criteria for grants specified in the document, *National Beach Guidance and Required Performance Criteria for Grants,* (document number: EPA–823–B–02–004).

V. Selection Process

Implementation Grants will be awarded through a non-competitive process by the EPA Regional offices. EPA expects to award grants to all eligible State and Territory applicants that meet requirements of the BEACH Act as described in this notice.

Who Has the Authority To Award BEACH Act Grants?

The Administrator has delegated the authority to award Implementation Grants to the Regional Administrators.

VI. Application Procedure

What Is the Catalog of Federal Domestic Assistance (CFDA) Number for the Program Development Implementation BEACH Act Grants?

The number assigned to the BEACH Act Grants is 66.472, Program Code CU.

Can BEACH Act Grant Funds Be Included in a Performance Partnership Grant?

For Fiscal Year 2003, BEACH Act Grants cannot be included in a Performance Partnership Grant.

What Are the Components of the Application Package?

The application package should contain completed EPA SF–424 Application for Federal Assistance, Program Summary, and Data Submission Plan and be submitted to the appropriate EPA Regional Office by June 30, 2003. EPA will review the documentation that is submitted to determine whether the program meets the requirements for implementation grants and make an award based on its determination. The Office of Management and Budget has authorized EPA to collect this information (BEACH Act Grant Information Collection Request, OMB control number 2040–0244). Please contact the appropriate EPA Regional Office for a complete application package. *See* Section VII for a list of EPA Regional Grant Coordinators or visit the EPA Beach Watch Web site at *www.epa.gov/waterscience/beaches/contact.html* on the Internet.

The Program Summary submitted with the application must provide sufficient technical detail for EPA to determine whether a State's program meets the requirements for implementation grants listed in section 1 of this notice. Specifically, the Program Summary must describe how the State used BEACH Act Grant funds to develop the beach monitoring and notification program, and how the program has met the nine performance criteria in *National Beach Guidance and Required Performance Criteria for Grants,* (document number: EPA–823–B–02–004).

The Data Submission Plan describes how States will develop their beach monitoring and notification data collection and reporting system. It will also describe the State data infrastructure, and how the State plans to submit beach monitoring and notification data to EPA. More information on both the Program Summary and Data Submission Plan is available at *www.epa.gov/waterscience/beaches/grants/.*

Will Quality Assurance and Quality Control (QA/QC) and Other Procedures Be Required for Application?

Yes. Three specific QA/QC requirements must be met to comply with EPA's required performance criteria for grants:

(1) Applicants must submit quality system documentation that describes the quality system implemented by the State, Tribe, or local government. It may be in the form of a Quality Management Plan or equivalent documentation.

(2) Applicants must submit a quality assurance project plan (QAPP) or equivalent documentation.

(3) Applicants are responsible for submitting documentation of the quality system and QAPP for review and approval by the EPA Quality Assurance Officer or his designee before environmental measurements are taken. More information about QA/QC procedures required for application is available in Chapter Four and Appendix H of National Beach Guidance and Required Performance Criteria for Grants, (document number: EPA–823–B–02–004).

Will There Be Reporting Requirements?

Recipients must submit annual performance reports and financial reports as required in 40 CFR §§ 31.40 and 31.41. The annual performance report explains changes to the beach monitoring and notification program during the grant year and how the grant funds were used to implement the program to meet the performance criteria listed in *National Beach Guidance and Required Performance Criteria for Grants,* (document number: EPA–823–B–02–004). The annual performance report required under 40 CFR 31. 40 is due no later than 90 days after the grant year. Recipients must also submit annual monitoring and notification reports required under the *National Beach Guidance and Required Performance Criteria for Grants,* (document number: EPA–823–B–02–004). The annual monitoring report requirement is established in sections 2.2.3 and 4.3 of *National Beach Guidance and Required Performance Criteria for Grants,* and the annual notification report requirement is established in sections 2.2.8 and 5.4 of the same document. The monitoring and notification data which should be submitted to EPA to meet these reporting requirements are described in Appendix E of *National Beach Guidance and Required Performance Criteria for Grants.* These reports include data collected as part of a monitoring and notification program and are required to be submitted to EPA by CWA section 406(b)(3)(A). As a condition of award of an implementation grant, EPA is requiring that the monitoring report and the notification report for any beach season be submitted not later than January 31 of the year following the beach season.

What Regulations and OMB Cost Circular Will Apply to the Award and Administration of These Grants?

The regulations at 40 CFR part 31 will govern the award and administration of grants to States, local governments, and Territories under section 406 of the BEACH Act. Allowable costs will be determined in accordance with the cost principles in OMB Cost Circular A–87.

VII. Grant Coordinators

Headquarters—Washington DC

Charles Kovatch USEPA, 1200 Pennsylvania Ave. NW—4305, Washington DC 20460; T: 202–566–0399; F: 202–566–0409; *kovatch.charles@epa.gov.*

Region I—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island

Matt Liebman USEPA Region I, One Congress St. Ste. 1100–CWQ, Boston, MA 02114–2023; T: 617–918–1626; F: 617–918–1505; *liebman.matt@epa.gov.*

Region II—New Jersey, New York, Puerto Rico, U.S. Virgin Islands

Helen Grebe USEPA Region II, 2890 Woodbridge Ave. MS220, Edison, NJ

08837–3679; T: 732–321–6797; F: 732–321–6616; *grebe.helen@epa.gov.*

Region III—Delaware, Maryland, Pennsylvania, Virginia

Nancy Grundahl USEPA Region III, 1650 Arch Street 3ES10, Philadelphia, PA 19103–2029; T: 215–814–2729; F: 215–814–2782; *grundahl.nancy@epa.gov.*

Region IV—Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina

Joel Hansel USEPA Region IV, 61 Forsyth St., 15th Floor, Atlanta, GA 30303–3415; T: 404–562–9274; F: 404–562–9224; *hansel.joel@epa.gov.*

Region V—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

Holly Wirick USEPA Region V, 77 West Jackson Blvd. WT–16J, Chicago, IL 60604–3507; T: 312–353–6704; F: 312–886–0168; *wirick.holiday@epa.gov.*

Region VI—Louisiana, Texas

Mike Schaub USEPA Region VI, 1445 Ross Ave. 6WQ–EW, Dallas, TX 75202–2733; T: 214–665–7314; F: 214–665–6689; *schaub.mike@epa.gov.*

Region IX—American Soma, Commonwealth of the Northern Mariana Islands, California, Guam, Hawaii

Terry Fleming USEPA Region IX, 75 Hawthorne St. WTR–2, San Francisco, CA 94105; T: 415–972–3462; F: 415–947–3537; *fleming.terrence@epa.gov.*

Region X—Alaska, Oregon, Washington

Rob Pedersen USEPA Region X, 120 Sixth Ave. OW–134, Seattle, WA 98101; T: 206–553–1646; F: 206–553–0165; *pedersen.rob@epa.gov.*

Dated: March 24, 2003.

G. Tracy Mehan III,

Assistant Administrator for Water.

[FR Doc. 03–7639 Filed 3–28–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

March 21, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 30, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *lesmith@fcc.gov*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at 202–418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0331.

Title: Aeronautical Frequency Notification, FCC Form 321.

Form Number: FCC 321.

Type of Review: Revision of a currently approved collection.

Respondents: Business and other for-profit entities; Not-for-profit institutions.

Number of Respondents: 1,855.

Estimated Time per Response: 40 minutes.

Frequency of Response: One-time and on occasion reporting requirements.

Total Annual Burden: 1,237 hours.

Total Annual Costs: $24,733.

Needs and Uses: On March 13, 2003, the Commission adopted a *Report and Order* (R&O), *Amendment of the Commission's Rules for Implementation of its Cable Operations and Licensing System (COALS) to Allow for Electronic Filing of Licensing Applications, Forms, Registrations and Notifications in the Multichannel Video and Cable Television Service and the Cable Television Relay Service,* FCC 03–55 This R&O provided for electronic filing and standardized information collections. Under 47 CFR Section 76.1804 of the FCC rules, an MVPD must file FCC Form 321 prior to commencing operation in the aeronautical frequency bands at an average power level across a 25 kHz bandwidth in any 160 microsecond time period equal to or greater than 10^{-4} watts at any point in the cable distribution system. In addition, this form must be filed prior to transmitting on any new frequency or frequencies in the aeronautical radio frequency bands. This form will replace the requirement that an MVPD send a letter containing approximately the same information. It should reduce the burden on respondents by clarifying the exact information they need to send and by providing a consistent format for the information.

OMB Control Number: 3060–0310.

Title: Cable Community Registration, FCC Form 322.

Form Number: FCC 322.

Type of Review: Revision of a currently approved collection.

Respondents: Business and other for-profit entities; not-for-profit institutions.

Number of Respondents: 316.

Estimated Time per Response: 30 minutes.

Frequency of Response: One time reporting requirement.

Total Annual Burden: 158 hours.

Total Annual Costs: $3,160.

Needs and Uses: On March 13, 2003, the Commission adopted a *Report and Order* (R&O), *Amendment of the Commission's Rules for Implementation of its Cable Operations and Licensing System (COALS) to Allow for Electronic Filing of Licensing Applications, Forms, Registrations and Notifications in the Multichannel Video and Cable Television Service and the Cable Television Relay Service,* FCC 03–55. This R&O provided for electronic filing and standardized information collections. Under 47 CFR Section 76.1801, cable operators will be required to file FCC Form 322 with the Commission prior to commencing operation of a community unit. FCC Form 322 will collect biographical information about the operator and system as well as a list of broadcast channels carried on the system. This form will replace the requirement that cable operators send a letter containing approximately the same information.

OMB Control Number: 3060–XXXX.

Title: Operator, Mail Address, and Operational Information Changes, FCC Form 324.

Form Number: FCC 324.

Type of Review: New collection.

Respondents: Business and other for-profit entities; not-for-profit institutions.

Number of Respondents: 5,000.

Estimated Time per Response: 10 minutes to 1 hour.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 2,500 hours.

Total Annual Costs: $50,000.

Needs and Uses: On March 13, 2003, the Commission adopted a Report and Order (R&O), *Amendment of the Commission's Rules for Implementation of its Cable Operations and Licensing System (COALS) to Allow for Electronic Filing of Licensing Applications, Forms, Registrations and Notifications in the Multichannel Video and Cable Television Service and the Cable Television Relay Service,* FCC 03–55. This R&O provided for electronic filing and standardized information collections. Under 47 CFR Section 76.1610, cable operators must notify the Commission of changes in ownership information or operating status within 30 days of such change using FCC Form 324. FCC Form 324 will cover a variety of changes related to cable operators, replacing the requirement of a letter containing approximately the same information. Every Form 324 filing will require biographical information about the operator and system—the additional information required depending largely upon the nature of the change.

OMB Control Number: 3060–0055.

Title: Application for Cable Television Relay Service Station (CARS) Authorization, FCC Form 327.

Form Number: FCC 327.

Type of Review: Revision of a currently approved collection.

Respondents: Business and other for-profit entities; not-for-profit institutions; individuals or households; State, local, or tribal governments.

Number of Respondents: 973.

Estimated Time per Response: 3 hrs and 10 mins (3.166 hours).

Frequency of Response: Record-keeping; On occasion reporting requirements.

Total Annual Burden: 3,081 hours.

Total Annual Costs: $61,620.

Needs and Uses: On March 13, 2003, the Commission adopted a Report and Order (R&O), *Amendment of the Commission's Rules for Implementation of its Cable Operations and Licensing System (COALS) to Allow for Electronic Filing of Licensing Applications, Forms, Registrations and Notifications in the Multichannel Video and Cable Television Service and the Cable Television Relay Service,* FCC 03–55. This R&O provided for electronic filing and standardized information collections. Under 47 CFR Sections 78.11–78.40 of FCC Rules, an applicant files FCC Form 327 to obtain an initial license or modification, transfer, assignment, or renewal of an existing Cable television Relay Service (CARS) microwave radio license. Franchised cable systems and other eligible services use the 12 GHz and 18 GHz CARS bands for microwave relays pursuant to 47 CFR part 78 of the Commission's Rules. CARS is principally a video transmission service used for intermediate links in a distribution network, *i.e.,* CARS stations relay broadcast television, low power television, AM, FM, and cablecasting video and audio signal transmissions for and supply program material to these various broadcast transmission systems using point-to-point and point-to-multipoint transmissions. The Commission has restructured FCC Form 327 primarily to make it conform to the online filing system.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–7558 Filed 3–28–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

March 24, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 30, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., DC 20554 or via the Internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at (202) 418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION: OMB Control No.: 3060–XXXX.

Title: Part 73, Subpart F, International Broadcast Stations.

Form Nos: FCC Forms 309, 310 and 311.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 57 respondents; 79 responses.

Estimated Time Per Response: 3–6 hours.

Frequency of Response: On occasion, semi-annual, annual and other reporting requirements, and recordkeeping requirements.

Total Annual Burden: 334 hours.

Total Annual Cost: $194,000.

Needs and Uses: The Commission released Report and Order, ET Docket No. 02–16, Amendments of Parts 2, 73, 74, 80, 90 and 97 of the Commission's Rules to Implement Decisions from World Radiocommunications Conferences Concerning Frequency Bands Below 28000 kHz. The Report and Order reduces the number of seasonal schedule changes for international broadcast stations from four per year to two per year. The Commission is seeking OMB approval for three FCC forms (FCC Forms 309, 310, and 311).

OMB Control No.: 3060–0810.

Title: Procedures for Designation of Eligible Telecommunications Carriers Pursuant to section 214(e)(6) of the Communications Act of 1934, as amended.

Form No: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 100.

Estimated Time Per Response: 20–60 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 6,200 hours.

Total Annual Cost: N/A.

Needs and Uses: 47 U.S.C. section 214(e)(6) states that a telecommunications carrier that is not subject to the jurisdiction of a state may request that the Commission determine whether it is eligible. The Commission must evaluate whether such telecommunications carriers meet the eligibility criteria set forth in the Act. The Commission concluded that petitions for designation filed under section 214(e)(6) relating to ''near reservation'' areas will not be considered as petitions relating to tribal lands and as a result, petitioners seeking Eligible Telecommunications Carriers (ETC) designation in such areas must follow the procedures outlined in the Twelfth Report and Order for non-tribal lands prior to submitting a request for designation to this Commission under section 214(e)(6).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–7559 Filed 3–28–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by Office of Management and Budget

March 13, 2003.

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Federal Communications Commission has received Office of Management and Budget (OMB) approval for the public information collection FCC Form 303–S, Application for Renewal of Broadcast Station license (3060–0110). Therefore, the Commission announces that OMB 3060–0110 is effective March 13, 2003.

DATES: Effective March 13, 2003.

FOR FURTHER INFORMATION CONTACT: Jim Bradshaw, 202–418–2700.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission has received OMB approval for the March 2003 edition of the FCC Form 303–S, Application for Renewal of Broadcast Station License. The effective date for use of the revised form is March 13, 2003. Through this document, the Commission announces that it has received this approval; OMB Control No. 3060–0110.

Pursuant to the Paperwork Reduction Act of 1995, Public Law 96–511. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Notwithstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning the OMB control numbers and expiration dates should be directed to Les Smith, Federal Communications Commission, (202) 418–0217.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–7620 Filed 3–28–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 24, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. American Trust Bancorp, Roswell, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of American Trust Bank, Roswell, Georgia (in organization).

Board of Governors of the Federal Reserve System, March 25, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–7570 Filed 3–28–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of January 28 and 29, 2003

In accordance with § 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on January 28 and 29, 2003.[1]

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long–run objectives, the Committee in the immediate future seeks conditions in reserve markets consistent with maintaining the federal funds rate at an average of around 1¼ percent.

By order of the Federal Open Market Committee, March 25, 2003.

Vincent R. Reinhart,

Secretary, Federal Open Market Committee.

[FR Doc. 03–7588 Field 3–28–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures

AGENCY: Federal Trade Commission.

[1] Copies of the Minutes of the Federal Open Market Committee meeting on January 28 and 29, 2003, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

ACTION: Invitation to comment on requested petition for exemption from Trade Regulation Rule.

SUMMARY: The Commission solicits public comment on a petition filed by Paccar, Inc., for an exemption from the requirements of the Franchise Rule.

DATES: Written comments will be accepted until May 30, 2003.

ADDRESSES: Comments may be filed in person or mailed to: Secretary, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Requests for copies of the petition and the Franchise Rule should be directed to the Public Reference Branch, Room 130, (202) 326–2222.

FOR FURTHER INFORMATION CONTACT: Steven Toporoff, Attorney, Room 238, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3135.

SUPPLEMENTARY INFORMATION: On December 21, 1978, the Federal Trade Commission promulgated a trade regulation rule entitled ''Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures (''the Rule'').'' 16 CFR part 436. In general, the Rule provides for pre-sale disclosure to prospective franchisees of important information about the franchisor, the franchise business, and the terms of the proposed franchise relationship. A summary of the Rule is available from the FTC Public Reference Branch, upon request.

Section 18(g) of the Federal Trade Commission Act provides that any person or class of persons covered by a trade regulation rule may petition the Commission for an exemption from such rule. If the Commission finds that the application of such rule to any person or class of persons is not necessary to prevent the unfair or deceptive acts or practices to which the rule relates, then the Commission may exempt such person or class from all or any part of the rule.

Paccar, Inc. (''Paccar'') has filed a petition for an exemption from the Franchise Rule pursuant to section 18(g) of the Federal Trade Commission Act, 15 U.S.C. 57a(g). Paccar manufacturers heavy-duty and medium-duty trucks, truck parts, and accessories, which it distributes through a network of dealers operating under the name ''Kenworth'' or ''Peterbilt.'' In its petition, Paccar asserts that an exemption should be granted because Paccar dealers are sophisticated business persons with experience in the industry, and the information-exchange and negotiation process leading to execution of a dealership agreement takes place over a period of several months, ensuring adequate time for review. Petitioner asserts that the experience and sophistication of prospective dealers and the company's lengthy selection process leading to the execution of the dealership agreement make the abuses identified by the Commission as the basis for the Franchise Rule unlikely and render application of the Rule to Paccar unnecessary and burdensome.

For a complete presentation of the arguments submitted by Petitioner, please refer to the full text of the petition, which may be obtained from the FTC Public Reference Branch, on request.

In assessing the present exemption request, the Commission solicits comments on all relevant issues germane to the proceeding, including the following: (1) Is there evidence indicating that Petitioner may engage in unfair or deceptive acts or practices in the offer and sale of dealership franchises? (2) Are there other reasons that might militate against granting Petitioner an exemption from the Franchise Rule?

The Commission has considered the arguments made by Petitioner and concludes that further inquiry is warranted before a decision regarding the petition may be made. The Commission, therefore, seeks comment on the exemption requested by Petitioner.

All interested parties are hereby notified that they may submit written data, views, or arguments on any issue of fact, law, or policy that may have some bearing on the requested exemption, whether or not such issues have been raised by the petition or in this notice. Such submission may be made for sixty days to the Secretary of the Commission.

Comments should be identified as ''Paccar Franchise Rule Exemption Comment'' and three copies should be submitted.

List of Subjects in 16 CFR Part 436

Trade Practices and Franchising.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–7610 Filed 3–28–03; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures

AGENCY: Federal Trade Commission.

ACTION: Invitation to comment on requested petition for exemption from Trade Regulation Rule.

SUMMARY: The Commission solicits public comment on a petition filed by Rolls-Royce Corp., for an exemption from the requirements of the Franchise Rule.

DATES: Written comments will be accepted until May 30, 2003.

ADDRESSES: Comments may be filed in person or mailed to: Secretary, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Requests for copies of the petition and the Franchise Rule should be directed to the Public Reference Branch, Room 130, (202) 326–2222.

FOR FURTHER INFORMATION CONTACT: Steven Toporoff, Attorney, Room 238, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580 (202) 326–3135.

SUPPLEMENTARY INFORMATION: On December 21, 1978, the Federal Trade Commission promulgated a trade regulation rule entitled ''Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures'' (''the Franschise Rule'' or ''Rule''). 16 CFR Part 3436. In general, the Rule provides for pre-sale disclosure to prospective Franchisees of important information about the francisor, the franchise business, and the terms of the proposed Franchise relationship. A summary of the Rule is available from the FTC Public Reference Branch upon request.

Section 18(g) of the Federal Trade Commission Act provides that any person or class of persons covered by a trade regulation rule may petition the Commission for an exemption from such rule. If the Commission finds that the application of such rule to any person or class of persons is not necessary to prevent the unfair or deceptive acts or practices to which the rule relates, then the Commission may exempt such person or class from all or any part of the rule.

Rolls-Royce Corp. (''Rolls-Royce'' or ''Petitioner'') has filed a petition for an exemption from the Franchise Rule pursuant to section 18(g) of the Federal Trade Commission Act, 15 U.S.C. 57a(g). Rolls-Royce manufacturers turboprop, turbofan, and industrial gas turbine engines for sale in the defense and civilian aerospace and industrial markets. It also provides aftermarket support for some of its model engines though a combination of company-owned and independent authorized maintenance centers (''AMCs''). The AMCs perform repair, overhaul, and

maintenance services for customers under the Rolls-Royce trademark.

In its petition, Roll-Royce asserts that an exemption should be granted because AMC purchasers are sophisticated business persons with extensive prior experience in the industry, and the information-exchange and negotiation process leading to execution of an AMC agreement takes place over a period of several months, ensuring adequate time for review. Petitioner asserts that the experience and sophistication of prospective dealers and the company's lengthy selection process leading to the execution of the dealership agreement make the abuses identified by the Commission as the basis for the Franchise Rule unlikely and render application of the Rule to Rolls-Royce unnecessary and burdensome.

For a complete presentation of the arguments submitted by Petitioner, please refer to the full text of the petition, which may be obtained from the FTC Public Reference Branch, on request.

In assessing the present exemption request, the Commission solicits comments on all relevant issues germane to the proceeding, including the following: (1) Is there evidence indicating that Petitioner may engage in unfair or deceptive acts or practices in the offer and sale of dealership franchises? (2) Are there other reasons that might militate against granting Petitioner an exemption from the Franchise Rule?

The Commission has considered the arguments made by Petitioner and concludes that further inquiry is warranted before a decision regarding the petition may be made. The Commission, therefore, seeks comment on the exemption requested by Petitioner.

All interested parties are hereby notified that they may submit written data, views, or arguments on any issues of fact, law, or policy that may have some bearing on the requested exemption, whether or not such issues have been raised by the petition or in this notice. Such submission may be made for sixty days to the Secretary of the Commission.

Comments should be identified as ''Rolls-Royce Corp. Franchise Rule Exemption Comment'' and three copies should be submitted.

List of Subjects in 16 CFR Part 436

Trade practices and Franchising.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–7611 Filed 3–28–03; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 992 3298]

The Ted Warren Corporation, et al.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before April 23, 2003.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov,* as prescribed below.

FOR FURTHER INFORMATION CONTACT: Dan Salsburg or Stephen Gurwitz, FTC, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3402 or 326–3272.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 24, 2003), on the World Wide Web, at ''*http://www.ftc.gov/os/2003/03/index.htm.*'' A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled ''confidential.'' Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: *consentagreement@ftc.gov*. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from The Ted Warren Corporation, The Ken Roberts Institute, Inc., and The Ken Roberts Company, corporations, and Ken Roberts, as an officer of the corporations (together, ''respondents'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Respondents advertise and sell materials (''Investment Courses'') that purport to teach purchasers how to profitably trade stocks, commodity futures and options, and real estate. The Investment Courses sold by respondents include the ''TWC Stock Course'' for trading stocks, the ''KRI Investment Portfolio'' for creating an investment portfolio, the ''KRC Commodity Course'' for trading commodity futures contracts and options, and the ''Jim Banks Probate Course,'' pursuant to a marketing agreement with J.G. Banks, Inc., for purchasing real estate and personal property through probate proceedings. Respondents have sold these Investment Courses through the Internet Web site *http://www.kenroberts.net* and related Web sites.

This matter concerns respondents' allegedly deceptive representation that purchasers of the Investment Courses who make profitable ''paper trades''—practice trades in which no funds are actually invested—using techniques described in the Investment Courses during one time period are likely to make profitable actual trades when their funds are invested in the market during a later time period. This matter also concerns the respondents' alleged failure to disclose the risks associated with the trading techniques described in the Investment Courses.

The proposed consent order contains provisions designed to prevent respondents from engaging in similar acts and practices in the future.

Part I of the proposed consent order prohibits the respondents from misrepresenting that purchasers of ''investment courses'' who make profitable ''paper trades'' are likely to make profitable actual trades when their funds are invested in the market. The term ''investment courses'' is defined as ''any program, service course, instruction, system, training, manual, computer software, or other materials involving the purchase or sale of stocks, currencies, commodity futures, options, real estate through probate proceedings, or other financial instruments or investments.''

Part II of the proposed consent order requires the respondents to make the following six risk disclosures:

1. For all Investment Courses: ''WARNING: [FUTURES TRADING, STOCK TRADING, CURRENCY TRADING, OPTIONS TRADING, ETC., as applicable] involves high risks and YOU can LOSE a lot of money.''

2. For all Investment Courses in which purchasers are advised or instructed to ''paper trade'' or otherwise practice making investments without investing actual funds: ''Being a successful PAPER TRADER during one time period does *not* mean that you will make money when you actually invest during a later time period. Market conditions constantly change.''

3. For all Investment Courses involving securities or the purchasing of options: ''When investing in [securities or the purchasing of options, as applicable] you may lose all of the money you invested.''

4. For all Investment Courses involving futures or the granting of options: ''When investing in (futures or the granting of options, as applicable) you may lose more than the funds you invested.''

5. For all Investment Courses involving futures and commodity options: ''Trading in commodity futures or options involves substantial risk of loss. According to many experts, most individual investors who trade commodity futures or options lose money.''

6. For all Investment Courses in which claims are made regarding past performance: ''Past Results are not necessarily indicative of Future Results.''

Parts III and IV of the proposed order require respondents to keep copies of relevant advertisements and materials substantiating claims made in the advertisements and to provide copies of the order to certain personnel. Part V requires TWC, KRI and KRC to notify the Commission of any changes in their corporate structures that might affect compliance with the order. Part VI requires that the individual respondent notify the Commission of changes in his employment status for a period of ten years. Part VII requires TWC, KRI and KRC to file compliance reports with the Commission. Part VIII provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–7609 Filed 3–28–03; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Solicitation of Partnering Organizations for Diabetes Detection Program

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science.

ACTION: Notice.

SUMMARY: On March 6, 2003, The Department of Health and Human Services (HHS) published an announcement seeking public and private sector organizations to partner in the establishment of the nationwide Diabetes Detection Program. This notice clarifies the intent of that announcement. It describes the Program and the partnerships, which would be established through memoranda of understanding with interested organizations and entities.

ADDRESSES: Notification of interest in partnering should be sent to Elizabeth Majestic, M.P.H., Acting Director, Office of Disease Prevention and Health Promotion, Office of Public Health and Science, Room 738–G, 200 Independence Ave., SW., Washington, DC 20201; (202) 401–6295 (telephone), 202–690–7054 (fax). Notifications may also be submitted by electronic mail to *emajestic@osophs.dhhs.gov.*

FOR FURTHER INFORMATION CONTACT: Ellis Davis, Office of Disease Prevention and Health Promotion, Office of Public Health and Science, Room 738–G, 200 Independence Ave., SW., Washington, DC 20201; (202) 260–2873 (telephone), (202) 690–7054 (fax), or by electronic mail to *edavis@osophs.dhhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Department will be launching a diabetes detection initiative. The goal of the initiative is to encourage people at risk for diabetes to get tested and to refer those who test positive for follow-up. Approximately 6 million people have diabetes and do not know it. It is believed that for many of these people, earlier diagnosis and management or treatment can prevent or delay the devastating complications of diabetes. State health departments and federally-funded community health centers will serve as the cornerstone for these detection efforts.

To assist the Department in implementing the diabetes detection initiative, HHS is seeking partners to participate in the initiative in accordance with their particular interests. The partnerships would be established through memoranda of understanding where each party would be responsible for resources to support their activity.

Where appropriate, organizations and entities could collaborate with state health department and community health center programs, as in the following examples:

- Partnering organizations could participate in a nationwide advertising campaign that would alert the American public to the opportunity for diabetes detection;
- Partnering organizations could participate in the production or distribution of printed materials that will be used by state programs and community health centers responsible for implementing the initiative;
- Employers could adopt the project and conduct detection clinics where people at high risk of diabetes could be identified, then referred for specific diagnosis and followup if warranted;
- Hospitals could provide professional resources to conduct detection clinics;

• Managed care plans could adopt the project and encourage their enrollees to have themselves assessed for risk and alter their lifestyles if the risk warrants;

• Colleges and universities could conduct detection events for their student populations;

• Area agencies on aging could form a component of a statewide program.

Where a statewide program is not in place, partnering organizations such as these could proceed on their own.

Availability of Funds

There are no Federal funds available for these partnerships.

Content of Request for Partnership

Each request for partnership should contain a description of: (1) The entity or organization; (2) its proposed involvement in the Department's diabetes detection initiative; and (3) resources or services the partnering organization would like to offer.

Evaluation Criteria

Partners will be selected by the Office of Disease Prevention and Health Promotion using the following criteria:

(1) Requester's qualifications and capability to contribute to the partnership;

(2) Requester's creativity for contributing to the diabetes detection initiative.

Dated: March 25, 2003.

Elizabeth Majestic,

Acting Deputy Assistant Secretary for Health (Disease Prevention and Health Promotion), Department of Health and Human Services.

[FR Doc. 03–7692 Filed 3–28–03; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Docket No. 02N–0475]

Draft ''Financial Relationships and Interests in Research Involving Human Subjects: Guidance for Human Subject Protection

AGENCY: Office of the Secretary, Office of Public Health and Science, HHS.

ACTION: Notice.

SUMMARY: The Office of Public Health and Science, Department of Health and Human Services (HHS) is soliciting public comment on a draft guidance document for Institutional Review Boards (IRBs), investigators, research institutions, and other interested parties, entitled ''Financial Relationships and Interests in Research Involving Human Subjects: Guidance for Human Subject Protection.'' This draft guidance document raises points to consider in determining whether specific financial interests in research affect the rights and welfare of human subjects, and if so, what actions could be considered to protect those subjects. This guidance applies to human subjects research conducted or supported by HHS or regulated by the Food and Drug Administration.

DATES: Submit written or electronic comments on the draft guidance on or before 4:30 p.m. on May 30, 2003. Comments on HHS guidance documents are welcome at any time.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Docket Number 02N–0475, Food and Drug Administration, 5630 Fishers Lane, Room 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.* All comments submitted should be identified with the docket number found in brackets in the heading of this notice. Comments received may be viewed on the Food and Drug Administration (FDA) Web site at *http://www.fda.gov/ohrms/dockets/default.htm* or may be seen in the FDA Docket Management Branch at 5630 Fishers Lane, Room 1061, Rockville, MD 20852 between 9 a.m. and 4 p.m., Monday through Friday.

Submit requests for single copies of the draft guidance document to the address identified below for further information. Requests may be made by mail or e-mail. Persons with access to the Internet also may obtain the document at *http://www.fda.gov/ohrms/dockets/GUIDANCES/DGUIDES.HTM.*

FOR FURTHER INFORMATION CONTACT: Glen Drew, Office for Human Research Protections, Office of Public Health and Science, The Tower Building, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852, (301) 402–4994, facsimile (301) 402–2071; e-mail *gdrew@osophs.dhhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

OPHS is seeking comments on the HHS draft guidance for IRBs, investigators, and research institutions, entitled ''Financial Relationships and Interests in Research Involving Human Subjects: Guidance for Human Subject Protection.'' In May 2000, HHS announced five initiatives to strengthen human subject protection in clinical research. One of these was to develop guidance on financial conflict of interest that would serve to further protect research participants. As part of this initiative, HHS held a conference on the topic of human subject protection and financial conflicts of interest on August 15–16, 2000. A draft interim guidance document, ''Financial Relationships in Clinical Research: Issues for Institutions, Clinical Investigators, and IRBs to Consider when Dealing with Issues of Financial Interests and Human Subject Protection,'' based on information obtained at and subsequent to that conference was made available to the public for comment on January 10, 2001. This document will replace that draft interim guidance.

The draft guidance recommends consideration of approaches and methods for dealing with issues of financial interests under the HHS human research subject protections regulations, 45 CFR part 46 and 21 CFR parts 50 and 56. The draft guidance expressly does not address regulatory requirements designed to enhance data integrity and objectivity in research found in 42 CFR part 50, subpart F, 45 CFR part 94, and 21 CFR part 54.

The draft guidance recommends that, in particular, IRBs, institutions engaged in research, and investigators consider whether specific financial relationships create financial interests in research studies that may adversely affect the rights and welfare of subjects. The guidance poses general considerations in evaluating financial relationships and their possible effects on human subjects. More detailed points for consideration are also offered for institutions, IRBs, and investigators.

II. Request for Comments

OPHS is distributing this draft guidance document for public comment. The Secretary is interested not only in reactions to the Guidance in general, and specifically the Points for Consideration, but also wishes to solicit views and ideas as to how to best assess any impacts of this guidance, as well as related non-Federal recommendations on enhancing the protection of human subjects. HHS guidance on consideration of financial interests in human subjects research will be issued after the public comments have been considered.

III. Draft Guidance Document

Department of Health and Human Services

Draft Guidance Document

March 31, 2003.

Financial Relationships and Interests in Research Involving Human Subjects: Guidance for Human Subject Protection [1]

This document will replace the ''HHS Draft Interim Guidance: Financial Relationships in Clinical Research: Issues for Institutions, Clinical Investigators, and IRBs to Consider when Dealing with Issues of Financial Interests and Human Subject Protection'' Dated January 10, 2001.

I. Introduction

A. Purpose

In this draft guidance document the Department of Health and Human Services (HHS, or the Department) raises points to consider in determining whether specific financial interests in research affect the rights and welfare of human subjects [2] and if so, what actions could be considered to protect those subjects. This draft guidance applies to human subjects research conducted or supported by HHS or regulated by the Food and Drug Administration (FDA). This document addresses only requirements for human subject protection (45 CFR part 46, 21 CFR parts 50, 56) [3] This document is nonbinding and does not change any existing regulations or requirements, and does not impose any new requirements.

Institutions and individuals involved in human research may establish financial relationships related to or separate from particular research projects. Those financial relationships may create financial interests of monetary value, such as payments for services, equity interests, or intellectual property rights. A financial interest related to a research study may be a conflicting financial interest if it will, or may be reasonably expected to, create a bias stemming from that financial interest. Furthermore, the Department recognizes that some financial interests in research may potentially or actually affect the rights and welfare of subjects, and this document provides some possible approaches to consider in assuring that subjects are adequately protected. Institutional review boards (IRBs), institutions, and investigators engaged in human subjects research each have appropriate roles in ensuring that financial interests do not compromise the protection of research subjects.

B. Target Audiences

The principal target audiences include institutions engaged in human subjects research and their officials, investigators, IRB members and staffs, and other interested parties.

C. Underlying Princinles

The regulations protecting human research subjects are based on the ethical principles described in the Belmont report: [4] respect for persons, beneficence, and justice. Financial relationships in human research should not compromise any of these principles. Openness and honesty are indicators of respect for persons, characteristics that promote ethical research and can only strengthen the research process.

D. Basis for This Document

The HHS human subject protection regulations (45 CFR part 46) require that institutions performing HHS conducted or supported non-exempt research involving human subjects have the research reviewed by an IRB whose goal is to help ensure that the rights and welfare of human subjects are protected. The comparable FDA regulations (21 CFR parts 50 and 56) require that FDA regulated research involving human subjects is reviewed by such an IRB. Under these regulations, IRBs are responsible for, among other things, determining that:

- Risks to subjects are minimized (45 CFR 46.111(a)(1), 21 CFR 56.111(a)(1));
- Risks to subjects are reasonable in relation to anticipated benefits, if any, to subjects (45 CFR 46.111(a)(2), 21 CFR 56.111(a)(2));
- Selection of subjects is equitable (45 CFR 46.111(a)(3), 21 CFR 56.11 1(a)(3));
- Informed consent will be sought from each prospective subject (45 CFR 46.111(a)(4), 21 CFR 56.111(a)(4)); and,
- The possibility of coercion or undue influence is minimized (45 CFR 46.116, 21 CFR 50.20).

In addition the IRB may

- Require that additional information be given to subjects ''when in the IRB's judgment the information would meaningfully add to protection of the rights and welfare of subjects'' (45 CFR 46.109(b), 21 CFR 56.109(b)).

For HHS conducted or supported research, the funding agency may impose additional conditions as necessary for the protection of human subjects (45 CFR 46.124).

IRBs are also responsible for ensuring that members who review research have no conflicting interest. 45 CFR 46.107(e) directly addresses conflicts of interest

[1] This document is intended to provide guidance. It does not create or confer rights for or on any person and does not operate to bind HHS, including FDA, or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

[2] Under the Public Health Service Act and other applicable law, HHS has authority to regulate institutions engaged in HHS conducted or supported research involving human subjects. For a description of what is meant by institutions engaged in research see the Office for Human Research Protections (OHRP) engagement policy at *http://ohrp.osophs.dhhs.gov/humansubjects/assurance/engage.htm.* Under the Federal Food, Drug, and Cosmetic Act, FDA has the authority to regulate Institutional Review Boards (IRBs) and investigators involved in the review or conduct of FDA-regulated research.

[3] This document does not address HHS Public Health Service regulatory requirements that cover institutional management of the financial interests of individual investigators who conduct PHS supported research. (42 CFR part 50, subpart F, and 45 CFR part 94). This document also does not address FDA regulatory requirements that place responsibilities on sponsors to disclose certain financial interests of investigators to FDA in marketing applications (21 CFR part 54). Guidelines interpreting the application of the PHS regulations to research conducted or supported by NIH that involve human subjects are available at *http://grants.nihgov/grants/guide/notice-files/NOT-OD–00–040.html.* Guidance interpreting the provisions of the FDA regulations appears at *http://www.fda.gov/oc/guidance/financialdis.html.*

The PHS regulations require grantee institutions and contractors to designate one or more persons to review investigators' financial disclosure statement describing their significant financial interests and ensure that conflicting financial interests are managed, reduced, or eliminated before expenditure of funds (42 CFR 50.604(b), 45 CFR 94.4(b)). The PHS threshold for significant financial interest is $10,000 per year income or equity interests over $10,000 and 5 percent ownership in a company (42 CFR 50.603, 45 CFR 94.3). The regulations give several examples of methods for managing investigators' financial conflicts of interest (42 CFR 50.605(a), 54 CFR 94.5(a)).

Sponsors are required to disclose certain financial interests of clinical investigators to FDA in marketing approval applications under the Federal Food, Drug and Cosmetic Act (FD&C Act) (21 CFR part 54). FDA regulations at 21 CFR part 54 address requirements for the disclosure of certain financial interests held by clinical investigators. The purpose of these regulations is to provide additional information to allow FDA to assess the reliability of the clinical data (21 CFR 54.1). The FDA regulations require sponsors seeking marketing approval for products to certify that investigators do not have certain financial interests, or to disclose those interests to FDA (21 CFR 54.4). These regulations require sponsors to report (1) financial arrangements between the sponsor and the investigator whereby the value of the investigator's compensation could be influenced by the outcome of the trial, (2) any proprietary interest in the product studied held by the investigator; (3) significant payments of other sorts over $25,000 beyond costs of the study; or(4) any significant equity interest in the sponsor of a covered study (21 CFR 54.4).

Note that when the PHS regulations were promulgated, the National Science Foundation (NSF) Investigator Financial Disclosure Policy was revised to match closely the PHS regulations. The NSF conflict of interest policy appears at *http://www.nsf.gov/bfa/cpo/gpm95/ch5.htm#ch5.*

[4] *http://ohrp.osophs.dhhs.gov/humansubjects/guidance/belmont.htm.*

by requiring that ''no IRB may have a member participate in the IRB's initial or continuing review of any project in which the member has a conflicting interest, except to provide information requested by the IRB.'' FDA regulations include identical language at 21 CFR 56.107(e).

Concerns have grown that financial conflicts of interest in research, derived from financial relationships and the financial interests they create, may affect the rights and welfare of human research subjects. Financial interests are not prohibited, and not all financial interests cause conflicts of interest or harm to human subjects. HHS recognizes the complexity of the relationships between government, academia, industry and others, and recognizes that these relationships often legitimately include financial relationships. However, to the extent financial interests may affect the rights and welfare of human subjects in research, IRBs, institutions, and investigators need to consider what actions regarding financial interests may be necessary to protect those subjects.

In May 2000, HHS announced five initiatives to strengthen human subject protection in clinical research. One of these was to develop guidance on financial conflict of interest that would serve to further protect research participants. As part of this initiative, HHS held a conference on the topic of human subject protection and financial conflict of interest on August 15–16, 2000. A draft interim guidance document, ''Financial Relationships in Clinical Research: Issues for Institutions, Clinical Investigators, and IRBs to Consider when Dealing with Issues of Financial Interests and Human Subject Protection,'' based on information obtained at and subsequent to that conference was made available to the public for comment on January 10, 2001.[5] This document replaces that draft interim guidance. The Department notes that other organizations have also addressed financial interests in human research via reports, guidance and recommendations.[6] Many of these contain strong and sound ideas for actions to deal with potential financial conflicts of interest on the part of institutions, investigators and IRBs.

II. Guidance for Institutions, IRBs and Investigators

A. General Approaches to Address Financial Relationships and Interests in Research Involving Human Subjects

The Department recommends that in particular, IRBs, institutions engaged in research, and investigators consider whether specific financial relationships create financial interests in research studies that may adversely affect the rights and welfare of subjects. These entities may elect to include the following questions in their deliberations:

- What financial relationships and resulting financial interests cause potential or actual conflicts?
- At what levels could those interests cause potential or actual conflicts?
- What procedures would be helpful, including those to
  - —collect and evaluate information regarding financial relationships related to research,
  - —determine whether those relationships potentially cause a conflict,
  - —determine what actions are necessary to protect human subjects and ensure that those actions are taken?
- Who should be educated regarding financial conflict of interest issues and policies?
- What entity or entities would examine individual and/or institutional financial relationships and interests?

B. Points for Consideration

Financial interests may be managed by eliminating them or mitigating their potentially negative impact. A variety of methods or combinations of methods may be effective. Some methods may be implemented by institutions engaged in the conduct of research, and some methods may be implemented by IRBs. Some of those may apply before research begins, and some may apply during the conduct of the research.

In establishing and implementing methods to protect the rights and welfare of human subjects from conflicts of interest created by financial relationships of parties involved in research, the Department recommends that IRBs, institutions engaged in research, and investigators consider the questions below. Additional questions may be appropriate. The Department's intent is not to be exhaustive, but to suggest ways to examine the issues so that appropriate actions can be taken for protection of the rights and welfare of human research subjects.

- Does the research involve financial relationships that could create conflicts of interest?
  - —How is the research supported or financed?
  - —Where and by whom was the study designed?
  - —Where and by whom will the resulting data be analyzed?
- What interests are created by the financial relationships involved in the situation?

[5] *http://ohrp.osophs.dhhs.gov/humansubiects/finreltn/finguid.htm.*

[6] Recent Federal and Private Sector Activities: In addition to the HHS initiative, several Federal organizations have examined the issues related to financial relationships in human subjects research:

- The National Bioethics Advisory Commission (NBAC), in a comprehensive examination of the ''Ethical and Policy Issues in Research Involving Human Participants,'' in Chapter 3 recommended development of federal, institutional, and sponsor policies and guidance to ensure that research subjects' rights and welfare are protected from the effects of conflicts of interest (*http://www.georgetown.edu/research/nbcbl/nbac/human/overvoll.pdf*).
- The HHS Office of the Inspector General (OIG) has issued a series of reports examining regulation and activities of IRBs. A June 2000 OIG report addressed recruitment practices and found that about one-quarter of the surveyed IRBs consider financial arrangements with sponsors of research as part of their protocol review. (*http://oig.hhs.gov/oei/reports/oei–01–97–00195.pdf*).
- The National Human Research Protections Advisory Committee (NHRPC) offered advice to HHS regarding the content and finalization of the HHS Draft Interim Guidance in August, 2001 (*http://ohrp.osophs.dhhs.gov/nhrpac/documents/augo1a.pdf*).
- In December 2001, the General Accounting Office released report 02–89 ''Biomedical Research: HHS Direction Needed to Address Financial Conflicts of Interest.'' The report recommended that the Secretary of Health and Human Services develop specific guidance or regulations concerning institutional financial conflicts of interest (*http://www.gao.gov/*).
- A number of nongovernmental organizations recently have addressed financial interests in reports and issued new or updated policies or guidelines of varying scope and specificity, including the Association of American Universities, October 2001 (*http://www.aau.edu/research/COI.01.pdf*), the Association of American Medical Colleges, December 2001 and October 2002 (*http://www.aamc.org/members/coitf/firstreport.pdf* and *http://www.aamc.org/members/coitf/2002coireport.pdf*), the International Committee of Medical Journal Editors October 2001 (*http://www.icmje.org/sponsor.htm*), the American Medical Association, January 2002 (*http://jama.ama–assn.org/issues/v287n1/abs/jsc10070.html*), the American Society of Gene Therapy, April 2000 (*http://www.asgt.org/policy/index.html*), and the Institute of Medicine, October 2002,report ''Responsible Research: A Systems Approach to Protecting Research Participants'' (*http://www.nap.edu/books/0309084881/html/*)

Two accrediting bodies for human subject protection programs have included elements addressing individual and institutional conflicts of interest in their accreditation evaluations, the *Association for the Accreditation of Human Research Protection Programs* (*http://www.aahrpp.org/images/Evaluation_Instrument_1.pdf*), and the National Committee for Quality Assurance, (*http://www.ncqa.org/Programs/QSG/VAHRPAP/vahrpapfindstds.pdf*).

Internationally, the World Medical Association's revision in 2000 of the Declaration of Helsinki, (*http://www.wma.net/e/policv/17–c_e.html*) principle 22, includes ''sources of funding'' among the items of information to be provided to subjects. A number of individual institutions also have developed policies for their own situations, as noted in the NIH Guide Notice issued in June 2000 (*http://grants.nih.grants/guide/notice-files/NOT-OD–00–040.html*). Some of these policies involve conflicts of interest management methods and address institutional financial interests as well as individual interests.

—Do individuals or institutions receive any compensation that may be affected by the study outcome?
—Do individuals or institutions involved in the research:
+have any proprietary interests in the product including patents, trademarks, copyrights, and licensing agreements?
+have an equity interest in the research sponsor and is it a publicly held company or non-publicly held company?
+receive significant payments of other sorts? (*e.g.* grants, compensation in the form of equipment, retainers for ongoing consultation, and honoraria)
+receive payment per participant or incentive payments, and are those payments within the norm?

• Given the financial relationships involved, is the institution an appropriate site for the research?

• How should financial relationships that potentially create a conflict of interest be managed?

Would the rights and welfare of human subjects be better protected by any or a combination of the following:

+reduction of the financial interest?
+disclosure of the financial interest to prospective subjects?
+separation of responsibilities for financial decisions and research decisions?
+additional oversight or monitoring of the research?
+an independent data and safety monitoring committee or similar monitoring body?
+modification of role(s) of particular research staff or changes in location for certain research activities, *e.g.,* a change of the person who seeks consent, or a change of investigator?
+elimination of the financial interest?

C. Specific Issues for Consideration Regarding

1. Institutions

The Department recommends that institutions engaged in federally conducted or supported human subjects research consider the following actions or other actions regarding financial conflicts of interest:

• Separate responsibilities for financial decisions and research decisions.

• Establish conflict of interest committees (COICs) [7] or identify other bodies or persons to deal with individuals' financial interests in research or verify their absence.

• Extend the responsibility of the COIC to address institutional financial interests in research or establish a separate COIC to address institutional financial interests in research.

• Establish criteria to determine what constitutes an institutional conflict of interest, including identifying leadership positions for which the individual's financial interests are such that they may need to be treated as institutional financial interests.

• Establish clear channels of communication between COICs and IRBs.

• Establish policies on providing information, recommendations, or findings from COIC deliberations to IRBs.

• Establish measures to foster the independence of IRBs and COICs.

• Include IRB members and staff and appropriate officials of the institution, along with investigators, among the individuals who report financial interests to COICs.

• Establish procedures for disclosure of institutional financial relationships to COICs.

• Provide training to appropriate individuals regarding financial interest requirements.

• Use independent organizations to hold or administer the institution's financial interest.

• Include individuals from outside the institution in the review and oversight of financial interests in research.

• Establish policies regarding the types of relationships that may be held by parties involved in the research and circumstances under which those financial relationships and interests may be held.

2. IRB Operations

The Department recommends that institutions engaged in human subjects research and IRBs that review HHS conducted or supported human subjects research or FDA regulated human subjects research consider establishing policies and procedures addressing IRB member potential and actual conflicts of interest as part of overall IRB policies and procedures. These might include:

• Reminding members of conflict of interest policies at the start of each meeting.

• Polling members to verify that no conflicts of interest exist regarding any protocols to be considered during the meeting.

• Recording the polling results in the meeting minutes.

• Recording in the meeting minutes verification for each protocol that any conflicted members did not participate in discussion or vote on protocols involving their conflict of interest, except to provide information as requested by the IRB (45 CFR 46.107(e), 21 CFR 56.107(e)).

• Developing educational materials about the regulations' requirements for IRE members.

3. IRB Review

The Department recommends that IRBs reviewing HHS conducted or supported human subjects research or FDA regulated human subjects research consider the following actions, or other actions related to conduct or oversight of research, based on particular situations:

• Determine whether methods being considered or used for management of financial interests of parties involved in the research adequately protect the rights and welfare of human subjects.

• Determine when an IRB needs additional information to decide whether the financial interests of parties involved in research could affect the rights and welfare of subjects as well as mechanisms for obtaining the additional information.

• Determine what actions are necessary to minimize risks to subjects.

• Determine the kind, amount, and level of detail of information to be provided to research subjects regarding the source of funding, funding arrangements, financial interests of parties involved in the research, and any financial interest management techniques applied.

4. Investigators

The Department recommends that investigators consider the potential effect that a financial relationship of any kind might have on a clinical trial, including interactions with research subjects, and whether to take any of the following actions:

• Including information in the consent document, such as

—the source of funding and funding arrangements for the conduct and review of research, or
—information about a financial arrangement of an institution or an investigator and how it is being managed.

• Using special measures to modify the consent process when a potential or actual financial conflict exists, such as

—having a non-biased third party obtain consent, especially when a potential or actual conflict of interest could influence the tone, presentation, or type of information presented during the consent process.

[7] The acronym COIC will be used to represent the body or person(s) designated to review financial interests.

• Considering independent monitoring of the research, *e.g.*, using a data and safety monitoring committee.

Dated: March 21, 2003.

Tommy G. Thompson,

Secretary, Department of Health and Human Services.

[FR Doc. 03–7691 Filed 3–28–03; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control And Prevention

[60Day–03–54]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506 (c) (2) (A) of the Paperwork reduction Act of 1995, the Center for Disease Control and Prevention is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda M. Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Emergency Epidemic Investigations (0920–0010)—Extension—(Epidemiology Program Office, EPO)—One of the objectives of CDC's epidemic services is to provide for the prevention and control of epidemics and protect the population from public health crises such as man made or natural biological disasters and chemical emergencies. This is carried out, in part, by training investigators, maintaining laboratory capabilities for identifying potential problems, collecting and analyzing data, and recommending appropriate actions to protect the public's health. When state, local, or foreign health authorities request help in controlling an epidemic or solving other health problems, CDC dispatches skilled epidemiologists from the Epidemic Intelligence Service (EIS) to investigate and resolve the problem. Resolving public health problems rapidly ensures costs effective health care and enhances health promotion and disease prevention. Annually, the EIS Program coordinates 400 Epidemic Assistance Investigations (Epi-Aids) and state-based field investigations. Epidemics are prevented and controlled by mobilizing and deploying CDC staff, primarily EIS officers to respond rapidly to disease outbreaks and disaster situations. At the request of public health officials—at the state, national, or international level-CDC provides assistance by participating in epidemiologic field investigations.

The purpose of the Emergency Epidemic Investigation surveillance is to collect data on the conditions surrounding and preceding the onset of a problem. The data must be collected in a timely fashion so that information can be used to develop prevention and control techniques, to interrupt disease transmission and to help identify the cause of an outbreak. Since the events necessitating the collections of information are of an emergency nature, most data collection is done by direct interview or written questionnaire and are one-time efforts related to a specific outbreak or circumstance. If during the emergency investigation, the need for further study is recognized, a project is designed and separate OMB clearance is required. Interviews are conducted to be as unobtrusive as possible and only the minimal information necessary is collected. The Emergency Epidemic Investigations is the principal source of data on outbreaks of infectious and noninfectious diseases, injuries, nutrition, environmental health and occupational problems.

Each investigation does contribute to the general knowledge about a particular type of problem or emergency, so that data collections are designed taking into account similar situations in the past. Some questionnaire have been standardized, such as investigations of outbreaks aboard aircraft or cruise vessels.

The Emergency Epidemic Investigations provides a range of data on the characteristics of outbreaks and those affected by them. Data collected include demographic characteristics, exposure to the causative agent(s), transmission patterns and severity of the outbreak on the affected population. These data, together with trend data, may be used to monitor the effects of change in the health care system, planning of health services, improving the availability of medical services and assessing the health status of the population.

Users of the Emergency Epidemic Investigations data include, but are not limited to EIS Officers in investigating the patterns of disease or injury, investigating the level of risky behaviors, identifying the causative agent and identifying the transmission of the condition and the impact of interventions.

It is difficult to predict the number of epidemic investigations which might occur in any given year. The previous three years' experience shows an annualized burden of 2,304 hours and respondent total of 10,150. Therefore, the request is for an estimated annual burden of 3,000 hours. This represents an estimated 12,000 respondents annually at 15/60 hours per response. There are no costs to respondents other than time.

Respondents	Number of respondents	Number of responses/ respondent	Avg. burden per response (in hrs.)	Total burden (in hrs.)
Total Respondents	12,000	1	15/60	3,000

Dated: March 24, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–7591 Filed 3–28–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

A Public Health Action Plan To Combat Antimicrobial Resistance (Part I: Domestic Issues): Meeting for Public Comment on the Antimicrobial Resistance Interagency Task Force Annual Report

The Centers for Disease Control and Prevention (CDC), Food and Drug Administration (FDA), and National Institutes of Health (NIH) announce an open meeting concerning antimicrobial resistance.

Name: A Public Health Action Plan to Combat Antimicrobial Resistance (Part I: Domestic Issues): Meeting for Public Comment on the Antimicrobial Resistance Interagency Task Force Annual Report.

Time and Date: 1:30 p.m.–6 p.m., June 25, 2003.

Place: Hyatt Regency Bethesda, Haverford Ballroom, One Bethesda Metro Center, 7400 Wisconsin Avenue at Old Georgetown Road, Bethesda, Maryland, 20814; telephone: 1–301–657–1234; Fax: 1–301–657–6453.

Status: Open to the public, limited only by the space available.

Purpose: To present the second annual report of progress by Federal agencies in accomplishing activities outlined in A Public Health Action Plan to Combat Antimicrobial Resistance (Part I: Domestic Issues), and solicit comments from the public regarding the annual report. The Action Plan serves as a blueprint for activities of Federal agencies to address antimicrobial resistance. The focus of the plan is on domestic issues.

Matters to be Discussed: The agenda will consist of welcome, introductory comments, followed by discussion of four focus areas in sequential plenary sessions lasting about 45 minutes each. The four focus areas are: Surveillance, Prevention and Control, Research, and Product Development. Session leaders will give a 10 to 15 minute overview at the beginning of each session, then open the meeting for general discussion.

Comments and suggestions from the public for Federal agencies related to each of the focus areas will be taken under advisement by the Antimicrobial Resistance Interagency Task Force. The agenda does not include development of consensus positions, guidelines, or discussions or endorsements of specific commercial products.

The Action Plan, Annual Report, and meeting agenda are available at *http://www.cdc.gov/drugresistance.* The public meeting is sponsored by the CDC, FDA, and NIH, in collaboration with seven other Federal agencies and departments involved in developing and writing A Public Health Action Plan to Combat Antimicrobial Resistance (Part I: Domestic Issues).

Agenda items are subject to change as priorities dictate.

Limited time will be available for oral questions, comments, and suggestions from the public. Depending on the number wishing to comment, a time limit of three minutes may be imposed. In the interest of time, visual aids will not be permitted, although written material may be submitted to the Task Force. Written comments and suggestions from the public are encouraged and can be submitted at the meeting or should be received by the contact person by regular mail or email listed below no later than July 31, 2003.

Persons anticipating attending the meeting are requested to send written notification to the contact person below by June 19, 2003, including name, organization (if applicable), address, phone, fax, and e-mail address.

For Further Information Contact: Ms. Vickie Garrett, Antimicrobial Resistance, Office of the Director, NCID, CDC, mail stop C–12, 1600 Clifton Road, NE, Atlanta, GA 30333; telephone 404–639–2603; fax 404–639–4197; or e-mail *aractionplan@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 25, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–7592 Filed 3–28–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Head Start Program Grant Application and Budget Instrument.

OMB No.: 0970–0207.

Description: The Head Start Bureau is proposing to renew the Head Start Grant Application and Budget Instrument which standardizes the grant application information that is requested from all Head Start and Early Head Start grantees applying for continuation grants. The application and budget forms are available on a data diskette and can be transmitted electronically to Regional and Central Offices. The Administration for Children, Youth and Families believes that in promulgating this application document the process of applying for Head Start program grants is made more efficient for applicants.

Respondents: Head Start and Early Head Start grantees.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
	1600	1	33	52,800
Estimated Total Annual Burden Hours:				52,800

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, a comment is best assured of having its full effect if OMB receives it

within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503. Attn: Desk Officer for ACF.

Dated: March 24, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–7552 Filed 3–28–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Faculty Loan Repayment Program (FLRP) Application (OMB No. 0915–0150)-Extension

Under the Health Resources and Services Administration Faculty Loan Repayment Program, disadvantaged graduates from certain health professions may enter into a contract under which HRSA will make payments on eligible educational loans in exchange for a minimum of two years of service as a full-time or part-time faculty member of an accredited health professions school. Applicants must complete an application and provide current loan balances on all eligible educational loans.

The estimate of burden for the form is as follows:

Form	Number of respondents	Responses per respondent	Total Responses	Hours per responses	Total burden hours
Applicants	94	1	94	1	94

Send comments to Susan G. Queen, PhD., HRSA Reports Clearance Officer, Room 11A–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: March 24, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–7537 Filed 3–28–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public Law 92–463, the fiscal year 2002 annual report for the following Health Resources and Services Administration's Federal advisory committee has been filed with the Library of Congress:

Health Professions and Nurse Education Special Emphasis Panel.

Copies are available to the public for inspection at the Library of Congress, Newspaper and Current Periodical Reading Room in the James Madison Memorial Building, Room LM–133 (entrance on Independence Avenue, between First and Second Streets, SE., Washington, DC).

Copies may be obtained from: Ms. Wilma Johnson, Acting Director, Office of Peer Review, Parklawn Building, Room 11A–33, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone 301–443–6339.

Dated: March 24, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–7536 Filed 3–28–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review, Comment Request; Organochlorine Exposure in Relation to Timing of Natural Menopause: The North Carolina Menopause Study

SUMMARY: Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute of Environmental Health Sciences (NIEHS), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on October 23, 2002, pages 65132–65133 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB number.

PROPOSED COLLECTION: *Title:* Organochlorine Exposure in Relation to Timing of Natural menopause (The North Carolina Menopause Study) *Type of Information Collection Request:* New. *Need and Use of Information Collection:* Smoking has been shown in many studies to be associated with a 1–2 year decrease in age at natural menopause. However, relatively little is known about the effect of other potential toxicants, including organochlorines such as polychlorinated biphenyls (PCBs), and 1,1 dichloro-2,2–bis(p-

chlorophenyl) ethylene (p,p′-DDE (DDE). We will assess timing of menopause among women who previously participated in the North Carolina Infant Feeding Study. PCB and DDE levels were analyzed in blood and breast milk samples around delivery and after pregnancy. The median age of the women as of March 2002 is 50 years. Data will be collected in a telephone interview focusing on reproductibve and menstrual history with additional information collected on demographic, social and behavioral factors that could affecting time of menopause. Approximately 50% of participants based on sampling strata that involve criteria relating to age and menopausal status will also have a blood sample collection. The purpose of this study is to assess the association between the baseline organochlorine measurements and timing of natural menopause. A secondary aim will be to conduct exploratory analyses of the association between specific factors (*e.g.,* pregnancy history, weight change) and rate of change in organochlorine levels. *Frequency of Response:* 1.1 responses per respondent. There also will be a yearly assessment of menopausal status based on a short interview (fifteen minute telephone interview) targeting women who are pre-menopausal based on the initial interview. *Affected Public:* Individuals or households. *Types of Respondents:* Women who participated in the North Carolina Infant Feeding Study. The annual reporting burden is as follows: *Estimated Number of Respondents:* 642 *Estimated Number of Responses per Respondent:* 1.1. *Average Burden Hours Per Response:* 0.66. *Estimated Total Burden Hours Requested:* 426. Annualized cost to respondents is $6,816. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

REQUEST FOR COMMENTS: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

DIRECT COMMENTS TO OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Glinda Cooper, Epidemiology Branch, NIEHS, Building 101, A3–05, P.O. Box 12233, Research Triangle Park, NC 27709 or call non-toll-free number (919) 541–0799 or E-mail your request, including your address to: ''*cooper1@niehs.nih.gov''.*

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: March 20, 2003.

Francine Little,

NIEHS, Associate Director for Management.

[FR Doc. 03–7578 Filed 3–28–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Extramural Clinical Research Loan Repayment Program for Individuals From Disadvantaged Backgrounds

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH) invites applications for the Extramural Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds (ECR–LRP or Program) for fiscal year 2003. Pursuant to authority granted by Public Law 106–554, the Consolidated Appropriations Act of 2001, which amended Section 487E of the Public Health Service (PHS) Act (42 U.S.C. 288–5), as added by the National Institutes of Health Revitalization Act of 1993 (Pub. L. 103–43), the Secretary of Health and Human Services (Secretary), acting through the Director of NIH, has established a loan repayment program that offers the repayment of educational loan debt to qualified health professionals from disadvantaged backgrounds, who have substantial debt relative to income and agree to conduct clinical research. The Director of NIH may enter into contracts with qualified health professionals from disadvantaged backgrounds who agree to engage in clinical research for a minimum of two years in exchange for loan repayments toward their outstanding educational loan debt, up to a maximum of $35,000 per year. Payments equal to 39 percent of total loan repayments are issued to the Internal Revenue Service on behalf of the participants to offset Federal tax liabilities incurred due to their participation in the Program.

DATES: Information regarding the ECR-LRP is currently available, and the following are the application deadline dates: Fiscal Year 2003—January 31, 2003; Fiscal Year 2004—January 31, 2004; and Fiscal Year 2005—January 31, 2005. All applications must be submitted on-line by 5 p.m. (eastern standard time). If an Application Deadline Date falls on a weekend or holiday, the application is due on the following business day by 5 p.m. (eastern standard time).

ADDRESSES: The information and an on-line application may be obtained at the NIH Loan Repayment Program Web site at *www.lrp.nih.gov* or by contacting the National Center on Minority Health and Health Disparities, Attention Kenya McRae, non-toll free telephone number (301) 402–1366, or via email at *mcraek@od.nih.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

(1) ''Clinical research'' is defined as patient-oriented clinical research conducted with human subjects or research on the causes and consequences of disease in human populations involving material of human origin (such as tissue specimens and cognitive phenomena) for which an investigator or colleague directly interacts with human subjects in an outpatient or inpatient setting to clarify a problem in human physiology, pathophysiology or disease, or epidemiologic or behavioral studies, outcomes research or health services research, or developing new technologies, therapeutic interventions, or clinical trials.

(2) ''Debt threshold'' is the minimum amount of qualified educational loan debt an applicant must have in order to be eligible for Program benefits. An applicant must have qualified educational loan debt equal to at least 20 percent of the applicant's annual

institutional base salary at the time of award.

(3) An ''individual from a disadvantaged background'' is defined as one who comes from a family with an annual income below a level based on low-income thresholds according to family size published by the U.S. Bureau of the Census, adjusted annually for the changes in the Consumer Price Index and adjusted by the Secretary of Health and Human Services (Secretary) for use in all health professions programs. The Secretary periodically publishes these income levels in the **Federal Register**. An applicant must certify his/her disadvantaged status under the above definition by submitting (a) a written statement from the individual's former health professions school(s) that indicates that he/she qualified for Federal disadvantaged assistance during attendance; or (b) documentation that he/she received financial aid from either Health Professions Student Loans (HPSL) or the Loans for Disadvantaged Student Program; or (c) documentation that he/she received scholarships from the U.S. Department of Health and Human Services (HHS) under the Scholarship for Individuals with Exceptional Financial Need.

(4) ''Institutional base salary'' is defined as the annual amount that the organization pays for the participant's appointment, whether the time is spent in research, teaching, patient care or other activities. Institutional base salary excludes any income that a participant may earn outside the duties of the organization, and it may not include or comprise any income (salary or wages) earned as a Federal employee.

(5) ''Total educational loan debt'' is defined as the outstanding educational loan debt incurred by health professionals for their educational expenses incurred at accredited institutions. It consists of the principal, interest, and related expenses of qualified U.S. Government, academic institutions, and commercial U.S. educational loans obtained by the applicant for (a) undergraduate, graduate and health professional school tuition expenses; (b) other reasonable educational expenses required by the school(s) attended, including fees, books, supplies, educational equipment and materials, and laboratory expenses; and (c) reasonable living expenses, including the cost of room and board, transportation and commuting costs, and other reasonable living expenses as determined by the Secretary or his designee.

(6) ''Repayable debt'' means the difference between the applicant's total educational loan debt and 50 percent of the applicant's debt threshold.

Background

The Consolidated Appropriations Act of 2001 (Pub. L. 106–554) was enacted on December 21, 2000, amending Section 487E of the Public Health Service (PHS) Act to authorize the Secretary of the Department of Health and Human Services (Secretary), through the Director of the National Institutes of Health (NIH), to enter into contracts with qualified health professionals from disadvantaged backgrounds. These health professionals are required to engage in clinical research in consideration of the Federal Government repaying a portion of the principal and interest of their extant educational loans, up to a maximum of $35,000 per year, for each year of service. The program is known as the Extramural Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds (ECR–LRP). Selected applicants become participants of the ECR–LRP only upon the execution of a contract by the Secretary or his designee.

Eligibility Criteria

Specific eligibility criteria with regard to participation in the ECR-LRP include the following:

(1) Applicants must be U.S. citizens, U.S. nationals, or permanent residents of the United States;

(2) Applicants must have a Ph.D., M.D., D.O., D.D.S., D.M.D., D.P.M., Pharm.D., D.C., N.D., or equivalent doctoral degree from an accredited institution;

(3) Applicants must come from a disadvantaged background;

(4) Applicants must have total qualifying educational loan debt equal to or in excess of 20 percent of their annual institutional base salary at the time their loan repayment contract is executed by the Secretary or designee (example: an applicant with a base salary of $40,000 per year must have a minimum outstanding educational loan debt of $8,000);

(5) Applicants must engage in qualified clinical research supported by a non-profit foundation, non-profit professional society, non-profit institution, or a U.S. or other government agency (Federal, State, or local). A foundation, professional society, or institution is considered to be non-profit if exempt from Federal tax under the provisions of Section 501 of the Internal Revenue Code (26 U.S.C. 501);

(6) Applicants must engage in qualified clinical research for at least 50 percent of their time, *i.e.,* not less than 20 hours per week;

(7) Applicants must agree to conduct research for which funding is not prohibited by Federal law, regulations, or HHS/NIH policy. Recipients of LRP awards must conduct their research in accordance with applicable Federal, State and local law (*e.g.,* applicable human subject protection regulations);

(8) Full-time employees of Federal Government agencies are ineligible to apply for LRP benefits. Part-time Federal employees who engage in qualifying research as part of their non-Federal duties, for the required percentage of time, are eligible to apply for loan repayment if they meet all other eligibility requirements;

(9) Applicants must have a research supervisor or mentor with experience in the area of proposed research;

(10) Applicants will not be excluded from consideration under the ECR-LRP on the basis of age, race, culture, religion, gender, sexual orientation, disability or other non-merit factors; and

(11) No individual may submit more than one LRP application to the NIH in any fiscal year. Individuals who have applied previously for the Program or any other NIH Loan Repayment Program but did not receive an award are eligible to submit a new application if they meet the above eligibility criteria.

The following individuals are ineligible for participation in the ECR–LRP:

(1) Persons who are not United States citizens, nationals, or permanent residents;

(2) Individuals who have a Federal judgment lien against their property arising from a Federal debt are barred from receiving Federal funds until the judgment is paid in full or satisfied;

(3) Individuals who owe an obligation of health professional service to the Federal Government, a State, or other entity, unless deferrals or extensions are granted for the length of the ECR–LRP service obligation. The following are examples of programs with service obligations that disqualify applicants from consideration, unless a deferral for the length of participation in the ECR–LRP is obtained:

- Physicians Shortage Area Scholarship Program,
- Primary Care Loan (PCL) Program—recipients of PCLs incur a service obligation to practice primary care. PCL recipients are eligible to apply for the ECR–LRP if the PCL has been paid in full. If still repaying the PCL, LRP applicants must submit documentation, via facsimile to (866) 849–4046, from the Health Resources and Services Administration (HRSA) that

demonstrates that the LRP applicant is satisfying the terms and conditions of the PCL,

• Public Health Service Scholarship Program,

• National Health Service Corps Scholarship Program,

• Armed Forces (Army, Navy, or Air Force) Professions Scholarship Program,

• Indian Health Service Scholarship Program,

• National Research Service Award Program—a current recipient of a postdoctoral National Research Service Award support from an individual postdoctoral fellowship (F32) or an institutional research training grant (T32) will not be eligible for loan repayment during the second year of NRSA support without a formal deferral of the NRSA service obligation (*see http://grants1.nih.gov/grants/guide/pa-files/PA–02–109.html).* Concurrent repayment of service obligations is prohibited. Participation in an NIH LRP is only permissible by first satisfying the NRSA service obligation, which is satisfied either by completing the second year of NRSA support or by requesting a deferral of the NRSA service obligation. (Note—first year NRSA recipients are eligible to apply for and receive NIH loan repayment. Second year NRSA recipients can apply to participate in the ECR–LRP, but can only receive loan repayment during the second year if an extension of time is obtained to satisfy the NRSA service obligation. If an extension is not obtained, loan repayment will commence after the completion of the NRSA service obligation. LRP payments are NOT retroactive.);

(4) Full-time employees of Federal Government agencies;

(5) Recipients of NIH Intramural Research Training Awards (IRTA) or Cancer Research Training Awards (CRTA);

(6) Individuals conducting research for which funding is precluded by Federal law, regulations or HHS/NIH policy, or that does not comply with applicable Federal, State, and local law regarding the conduct of the research (*e.g.,* applicable human subject protection regulations);

Individuals with ineligible loans, which include loans that have been consolidated with a loan of another individual (including spouses and children), or loans that are not educational, such as home equity loans;

(8) Individuals with existing service obligations to Federal, State, or other entities may not apply for the ECR-LRP, unless and until the existing service obligation is discharged or deferred for the length of program participation; and

(9) Individuals that have a Federal judgment lien against their property arising from a Federal debt may not apply for the ECR–LRP until the judgment has been paid in full or otherwise satisfied.

Application Procedures

Applications must be submitted electronically to the Office of Loan Repayment (OLR). The NIH LRP Web site is *www.lrp.nih.gov.* The site has an Applicant Information Bulletin with the current deadlines, sources for assistance, and additional details regarding application procedures.

Application materials from the applicant, the supervisor/mentor, recommenders, and institutional officials must be submitted prior to the application deadline.

The following information must be provided by the applicant:

1. *Applicant Information Statement.*
2. *Biosketch.*
3. *Personal Statement,* which includes a discussion of career goals and academic objectives.
4. *Description of Research Activities,* which describes the current or proposed research project including the specific responsibilities and role of the applicant in conducting the research. The research supervisor or mentor will be asked to concur in the research project description provided by the applicant.
5. *Contact Information for Three Recommenders* (one of whom is identified as research supervisor or mentor).
6. *Contact Information for Institution Official* able to serve as the Institutional Contact and verify an applicant's employment/research appointment and research funding status.
7. *On-line Certification.*
8. *Loan information,* which includes the current account statement(s), and promissory note(s) or disclosure statement(s), obtained from lending institution(s), submitted via facsimile to (866) 849–4046.
9. *Notice of Grant/Award* (or PHS Form Number 2271 for T32 recipients) if applying based on NIH support.
10. *Certification of Disadvantaged Background,* which verifies the applicant's disadvantaged status and consists of one of the following: (a) Written statement from the applicant's former health professions school(s) that indicates that the applicant qualified for Federal disadvantaged assistance during attendance; (b) documentation that the applicant received financial aid from either Health Professions Student Loans (HPSL) or the Loans for Disadvantaged Students Program; or (c) documentation that the applicant received a scholarship from the HHS under the Scholarship for Individuals with Exceptional Financial Need.

The following information must be provided by the Research Supervisor/Mentor and submitted electronically via the NIH–LRP Web site:

1. *Recommendation.*
2. *Biosketch.*
3. *Assessment of the Research Activities Statement* submitted by the applicant.
4. *Description of the Research Environment.* (Please provide detailed information about the lab where the applicant is or will be conducting research, including funding, lab space, and major areas under investigation.)
5. *Training or Mentoring Plan.* (Includes a detailed discussion of the training and/or mentoring plan, as well as the research methods and scientific techniques to be taught.)
6. *Biosketch of other pertinent staff members* involved in training or mentoring the applicant.

Recommenders must submit their recommendations electronically.

Institutional Contacts must electronically submit a certification, via the NIH–LRP Web site, that (a) assures the applicant will be provided the necessary time and resources to engage in the research project for two years from the date a Loan Repayment Program Contract is executed; (b) assures that the applicant is or will be engaged in qualifying research for 50 percent of his/her time, *i.e.*, not less than 20 hours per week; (c) certifies that the funding foundation, professional society, or institution is considered to be non-profit as provided under Section 501 of the Internal Revenue Code (26 U.S.C. 501) or is a U.S. or other government entity (Federal, State or local), and (d) provides the applicant's institutional base salary.

Review Process

Applications that are received and complete by the deadline will undergo peer review by a Special Emphasis Panel (SEP). The reviewers will use the review criteria in assessing and rating each application.

Review Criteria

a. Potential of the applicant to pursue a career in clinical research.

• Appropriateness of the applicant's previous training and experience to prepare him/her for a clinical research career.

• Suitability of the applicant's proposed clinical research activities in the two-year loan repayment period to foster a research career.

• Assessment of the applicant's commitment to a research career as

reflected by the personal statement of long-term career goals and the plan outlined to achieve those goals.

• Strength of recommendations attesting to the applicant's potential for a research career.

b. Quality of the overall environment to prepare the applicant for a clinical research career.

• Availability of appropriate scientific colleagues to achieve and/or enhance the applicant's research independence.

sbull Quality and appropriateness of institutional resources and facilities.

Program Administration and Details

Under the ECR–LRP, a portion of the participants' outstanding educational loan debt will be repaid. Participants will not automatically qualify for the maximum amount of loan repayment. The amount the NCMHD will consider for repayment during the initial two-year contract shall be calculated as follows: one-fourth the repayable debt per year, up to a maximum of $35,000 per year. For example, a participant with a base salary of $40,000 per year and an outstanding eligible educational loan debt of $100,000, would have a debt threshold of $8,000 (the debt threshold is 20 percent of an applicant's annual institutional salary). All participants are responsible for paying one-half of their debt threshold amount. This amount is known as the participant's obligation and is subtracted from the total outstanding loan debt. In this case, the participant's obligation would be $4,000 and the participant's eligible loan debt would be reduced to $96,000. This reduced amount is known as the repayable debt ($100,000 − $4,000 = $96,000). Of the $96,000 repayable debt amount, the NCMHD would repay $24,000 a year in loan repayments (one-fourth of the repayable debt amount), plus tax benefits.

Loan repayments will be made to the designated lender following the completion of each full quarter (3 months) of service by the participant and upon the receipt of requested documentation from the participants and their supervisors/mentors. Because the first payment to the lenders on behalf of the participants will not commence until the end of the first full quarter of obligated service, participants should continue to make monthly loan payments until they have been informed that payments have been forwarded to their lenders. This measure enables the participants to maintain their loans in a current payment status.

In return for the repayment of their educational loans, participants must agree to (1) engage in qualified clinical research for a minimum period of two years; (2) engage in such research for at least 50 percent of their time, *i.e.*, not less than 20 hours per week; (3) make payments to lenders on their own behalf for periods of Leave Without Pay (LWOP); (4) pay monetary damages as required for breach of contract; and (5) satisfy other terms and conditions of the LRP contract.

Repayments are made directly to lenders, following the receipt of (1) the Principal Investigator, Program Director, or Research Supervisor's verification of completion of the prior period of research, and (2) lender verification of the crediting of prior loan repayments, including the resulting account balances and current account status. The NIH will repay loans in the following order, unless the Secretary determines that significant savings would result from a different order of priority:

(1) Loans guaranteed by the U.S. Department of Health and Human Services:

• Health Education Assistance Loan (HEAL);

• Health Professions Student Loan (HPSL);

• Loans for Disadvantaged Students (LDS); and

• Nursing Student Loan Program (NSL);

(2) Loans guaranteed by the U.S. Department of Education:

• Direct Subsidized Stafford Loan;

• Direct Unsubsidized Stafford Loan;

• Direct Consolidation Loan;

• Perkins Loan;

• FFEL Subsidized Stafford Loan;

• FFEL Unsubsidized Stafford Loan; and

• FFEL Consolidation Loan;

(3) Loans made or guaranteed by a State, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States;

(4) Loans made by academic institutions; and

(5) Private (''Alternative'') Educational Loans:

• MEDLOANS; and

• Private (non-guaranteed) Consolidation Loans.

The following loans are NOT repayable under the ECR–LRP:

(i) Loans not obtained from a U.S. or other government entity, academic institution, or a commercial or other chartered U.S. lending institution such as loans from friends, relatives, or other individuals, and non-educational loans, such as home equity loans;

(ii) Loans for which contemporaneous documentation (current account statement and promissory note or lender disclosure statement) is not available;

(iii) Loans that have been consolidated with loans of other individuals, such as a spouse or child;

(iv) Loans or portions of loans obtained for educational or living expenses that exceed a reasonable level, as determined by the standard school budget for the year in which the loan was made, and are not determined by the LRP to be reasonable based on additional contemporaneous documentation provided by the applicant;

(v) Loans, financial debts, or service obligations incurred under the following programs, or other programs that incur a service obligation that converts to a loan on failure to satisfy the service obligation:

• Physicians Shortage Area Scholarship Program (Federal or State);

• National Research Service Award Program;

• Public Health Service and National Health Service Corps Scholarship Program;

• Armed Forces (Army, Navy, or Air Force) Health Professions Scholarship Program; and

• Indian Health Service Scholarship Program;

(vi) Delinquent loans, loans in default, or loans not current in their payment schedule;

(vii) PLUS Loans;

(viii) Loans that have been paid in full;

(ix) Loans obtained after the execution of the LRP Contract (*e.g.*, promissory note signed after the LRP contract has been awarded); and

(x) Primary Care Loans.

During lapses in loan repayments, due either to NIH administrative complications or a break in service, LRP participants are wholly responsible for making payments or other arrangements that maintain loans current, such that increases in either principal or interest do not occur. Penalties assessed participants as a result of NIH administrative complications to maintain a current payment status may not be considered for reimbursement.

Additional Program Information

This program is not subject to the provision of Executive Order 12372, Intergovernmental Review of Federal Programs. Under the requirements of the Paperwork Reduction Act of 1995, OMB has approved the application forms for use by the ECR–LRP under OMB Approval No. 0925–0361 (expires December 31, 2004).

The Catalog of Federal Domestic Assistance number for the ECR–LRP is 93.308.

Dated: February 5, 2003.

Elias A. Zerhouni,

Director, NIH.

[FR Doc. 03–7580 Filed 3–28–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Health Pediatric Research Loan Repayment Program

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH) announces the availability of educational loan repayment under the NIH Pediatric Research Loan Repayment Program (PR–LRP). The Pediatric Research Loan Repayment Program, which is authorized by Section 487F [1] of the Public Health Service (PHS) Act (42 U.S.C. 288–6), as added by the Children's Health Act of 2000 (Pub. L. 106–310), provides for the repayment of educational loan debt of qualified health professionals who agree to conduct pediatric research. The Pediatric Research Loan Repayment Program provides for the repayment of up to $35,000 of the principal and interest of the extant educational loans of such health professionals for each year of obligated service. Payments equal to 39 percent of total loan repayments are issued to the Internal Revenue Service on behalf of program participants to offset Federal tax liabilities incurred. The purpose of the Pediatric Research Loan Repayment Program is the recruitment and retention of highly qualified health professionals as pediatric investigators. Through this notice, the NIH invites qualified health professionals who contractually agree to engage in pediatric research for at least two years, and who agree to engage in such research for at least 50 percent of their time, *i.e.*, not less than 20 hours per week, to apply for participation in the NIH Pediatric Research Loan Repayment Program.

DATES: Interested persons may request information about the Pediatric Research Loan Repayment Program on March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Jerry Moore, NIH Regulations Officer, Office of Management Assessment, NIH, 6011 Executive Blvd., Room 601, MSC 7669, Rockville, MD 20892, by email (*jm40z@nih.gov*), by fax 301–402–0169, or by telephone 301–496–4607 (not a toll-free number). For program information contact Marc S. Horowitz, e-mail *lrp@nih.gov,* or telephone 301–402–5666 (not a toll free number). Information regarding the requirements, application deadline dates, and an on-line application for the Pediatric Research Loan Repayment Program may be obtained at the NIH Loan Repayment Program Web site, *http://www.lrp.nih.gov.*

SUPPLEMENTARY INFORMATION: The Children's Health Act of 2000 (Pub. L. 106–310) was enacted on October 17, 2000, adding section 487F of the PHS Act (42 U.S.C. 288–6). Section 487F authorizes the Secretary, acting through the Director of the NIH, to carry out a program of entering into contracts with appropriately qualified health professionals. Under such contracts, qualified health professionals agree to conduct pediatric research for at least two years in consideration of the Federal Government agreeing to repay, for each year of research service, not more than $35,000 of the principal and interest of the qualified educational loans of such health professionals. Payments equal to 39 percent of total loan repayments are issued to the Internal Revenue Service on behalf of program participants to offset Federal tax liabilities incurred. This program is known as the NIH Pediatric Research Loan Repayment Program (PR–LRP).

Eligibility Criteria

Specific eligibility criteria with regard to participation in the Pediatric Research Loan Repayment Program include the following:

1. Applicants must be U.S. citizens, U.S. nationals, or permanent residents of the United States;

2. Applicants must have a Ph.D., M.D., D.O., D.D.S., D.M.D., D.P.M., Pharm.D., D.V.M., D.C., N.D., or equivalent doctoral degree from an accredited institution;

3. Applicants must have total qualifying educational loan debt equal to or in excess of 20 percent of their institutional base salary on the date of program eligibility (the effective date that a loan repayment contract has been executed by the Secretary of Health and Human Services or designee), expected to be between June 1 and August 1, 2003. Institutional base salary is the annual amount that the organization pays for the participant's appointment, whether the time is spent in research, teaching, patient care, or other activities. Institutional base salary excludes any income that a participant may earn outside the duties of the organization. Institutional base salary may not include or comprise any income (salary or wages) earned as a Federal employee;

4. Applicants must conduct qualifying research supported by a non-profit foundation, non-profit professional association, or other non-profit institution, or a U.S. or other government agency (Federal, State, or local). A foundation, professional association, or institution is considered to be non-profit if exempt from Federal tax under the provisions of Section 501 of the Internal Revenue Code (26 U.S.C. 501);

5. Applicants must engage in qualified pediatric research. Pediatric research is defined as research that is directly related to diseases, disorders, and other conditions in children;

6. Applicants must engage in qualified pediatric research for at least 50 percent of their time, *i.e.*, not less than 20 hours per week;

7. Full-time employees of Federal Government agencies are ineligible to apply for LRP benefits. Part-time Federal employees who engage in qualifying research as part of their non-Federal duties for at least 20 hours per week, and whose funding is from a non-profit institution as defined in number 4 of this section, are eligible to apply for loan repayment if they meet all other eligibility requirements;

8. Applicants must agree to conduct research for which funding is not prohibited by Federal law, regulation, or HHS/NIH policy. Recipients who receive LRP awards must conduct their research in accordance with applicable Federal, State and local laws (*e.g.*, applicable human subject protection regulations);

9. Applicants will not be excluded from consideration under the Pediatric Research Loan Repayment Program on the basis of age, race, culture, religion, gender, sexual orientation, disability, or other non-merit factors; and

10. No individual may submit more than one LRP application to the NIH in any fiscal year. Individuals who have applied previously for the PR–LRP but did not receive an award are eligible to submit a new application if they meet all of the above eligibility criteria.

The following individuals are ineligible for participation in the Pediatric Research Loan Repayment Program:

[1] So in law. There are two sections 487F. Section 1002(b) of Public Law 106–310 (114 Stat. 1129), inserted section 487F above. Subsequently, section 205 of Public Law 106–505 (114 Stat. 2329), which relates to a Loan Repayment Program for Clinical Researchers, inserted a section 487F after section 487E.

1. Persons who are not United States citizens, nationals, or permanent residents;

2. Any individual who has a Federal judgment lien against his/her property arising from a Federal debt is barred from receiving Federal funds until the judgment is paid in full or satisfied;

3. Any individual who owes an obligation of health professional service to the Federal Government, a State, or other entity, unless deferrals or extensions are granted for the length of their Extramural Loan Repayment Program service obligation. The following are examples of programs with service obligations that disqualify an applicant from consideration, unless a deferral for the length of participation in the Pediatric Research Loan Repayment Program is obtained:

Armed Forces (Army, Navy, or Air Force) Professions Scholarship Program,

Exceptional Financial Need (EFN) Scholarship Program,

Financial Assistance for Disadvantaged Health Professions Students (FADHPS),

Indian Health Service (IHS) Scholarship Program,

National Health Service Corps (NHSC) Scholarship Program,

National Institutes of Health Undergraduate Scholarship Program (UGSP),

Physicians Shortage Area Scholarship Program,

Primary Care Loan (PCL) Program,

Public Health Service (PHS) Scholarship Program, and

National Research Service Award (NRSA) Program—a recipient of postdoctoral National Research Service Award support from an individual postdoctoral fellowship (F32) or an institutional research training grant (T32) is eligible for loan repayment. NRSA recipients incur a service obligation of 12 months for their first year of NRSA support. This obligation is usually repaid in the second year of the NRSA award. Note: NRSA service and loan repayment service obligations cannot be concurrently satisfied. There are two options for NRSA LRP recipients: (1) Defer receipt of LRP payments in the 2nd year of NRSA support to fulfill their obligation; or (2) request an extension of time to fulfill the NRSA service obligation in order to satisfy the LRP service obligation while also receiving loan repayment.

4. Full-time employees of Federal Government agencies;

5. Current recipients of NIH Intramural Research Training Awards (IRTA) or Cancer Research Training Awards (CRTA);

6. Individuals conducting research for which funding is precluded by Federal law, regulations or HHS/NIH policy, or that does not comply with applicable Federal, State, and local law regarding the conduct of the research (*e.g.,* applicable human subject protection regulations); and

7. Individuals with ineligible loans, which include loans that have been consolidated with a loan of another individual (including spouses or children), or loans that are not educational, such as home equity loans.

Selection Process

Upon receipt, applications for the Pediatric Research Loan Repayment Program will be reviewed for eligibility and completeness by the NIH Office of Loan Repayment. Incomplete or ineligible applications will not be processed for review. Applications that are complete and eligible will be referred to the appropriate NIH Institute or Center for peer review by the NIH Center for Scientific Review (CSR). In evaluating the application, reviewers will be directed to consider the following components as they relate to the likelihood that the applicant will continue in a pediatric research career:

a. Potential of the applicant to pursue a career in pediatric research.

- Appropriateness of the applicant's previous training and experience to prepare him/her for a pediatric research career.
- Suitability of the applicant's proposed pediatric research activities in the two-year loan repayment period to foster a research career.
- Assessment of the applicant's commitment to a research career as reflected by the personal statement of long-term career goals and the plan outlined to achieve those goals.
- Strength of recommendations attesting to the applicant's potential for a research career.

b. Quality of the overall environment to prepare the applicant for a pediatric research career.

- Availability of appropriate scientific colleagues to achieve and/or enhance the applicant's research independence.
- Quality and appropriateness of institutional resources and facilities.

The following information is furnished by the applicant or others on behalf of the applicant (forms are completed electronically at the NIH LRP Web site, *www.lrp.nih.gov*):

Applicants electronically transmit the following to the NIH Office of Loan Repayment:

1. Applicant Information Statement.
2. Biosketch.
3. Personal Statement, which includes a discussion of career goals and academic objectives.
4. Description of Research Activities, which describes the current or proposed research project including the specific responsibilities and role of the applicant in conducting the research. The research supervisor or mentor will be asked to concur in the research project description provided by the applicant.
5. Identification of three Recommenders (one of whom is identified as research supervisor or mentor).
6. Identification of Institutional Contact.
7. On-line Certification.
8. Current account statement(s), and promissory note(s) or disclosure statement(s), obtained from lending institution(s), submitted via facsimile to 866–849–4046.
9. If applying based on NIH support, Notice of Grant/Award (or PHS Form Number 2271 for T32 recipients).

Research supervisors or mentors electronically transmit the following to the NIH Office of Loan Repayment:

1. Recommendation.
2. Biosketch.
3. Assessment of the Research Activities Statement submitted by the applicant.
4. Description of the Research Environment, which provides detailed information about the lab where the applicant is or will be conducting research, including funding, lab space, and major areas under investigation.
5. Training or Mentoring Plan, which includes a detailed discussion of the training or mentoring plan, including a discussion of the research methods and scientific techniques to be taught. This document is completed by the research supervisor or mentor and is submitted for all applicants (except for applicants with an NIH R01 or equivalent grant).
6. Biosketch of a laboratory staff member if involved in training or mentoring the applicant.

The other two Recommenders electronically transmit recommendations to the NIH Office of Loan Repayment.

Institutional Contacts electronically transmit the following to the NIH Office of Loan Repayment:

A certification that: (a) Assures that the applicant will be provided the necessary time and resources to engage in the research project for two years from the date a Loan Repayment

Program Contract is executed; (b) assures that the applicant is or will be engaged in qualifying research for 50 percent of his/her time, *i.e.,* not less than 20 hours per week; (c) certifies that the institution is non-profit (exempt from tax under 26 U.S.C. 501) or is a U.S. or other government agency (Federal, State, local); and (d) provides the applicant's institutional base salary.

Program Administration and Details

Under the Pediatric Research Loan Repayment Program the NIH will repay a portion of the extant qualified educational loan debt incurred to pay for the researcher's undergraduate, graduate, and/or health professional school educational expenses. Individuals must have total qualified educational debt that equals or exceeds 20 percent of their institutional base salary on the date of program eligibility. This is called the debt threshold. The formula used to calculate the potential annual loan repayment amount is total educational debt less the participant obligation (an amount equal to 10 percent of institutional base salary), which yields the total repayable debt; the total repayable debt is divided by 25 percent, which yields the potential annual repayment amount (up to $35,000). Participants are encouraged to pay the participant obligation during the contract period.

Following is an example of loan repayment calculations: An applicant has a loan debt of $100,000 and a university compensation of $40,000. Since the loan debt exceeds the debt threshold (20 percent of university compensation = $8,000), the applicant has sufficient debt for loan repayment consideration. The participant obligation is 10 percent of the institutional base salary, in this case $4,000. Thus, repayment of the $4,000 debt is the applicant's responsibility. The remaining amount, in this example $96,000 (total repayable debt) will be considered for repayment on a graduated basis. In this case, the maximum to be repaid in the initial two-year contract is $48,000 or $24,000 per year, plus tax reimbursement benefits.

The total repayable debt will be paid at the rate of one-quarter per year, subject to a statutory limit of $35,000 per year, for each year of obligated service. Individuals are required to initially engage in 2 years of qualified pediatric research.

Following conclusion of the initial two-year contract, participants may competitively apply for renewal contracts if they continue to engage in qualified pediatric research. These continuation contracts may be approved on a year-to-year basis, subject to a finding by NIH that the applicant's pediatric research accomplishments are acceptable, qualified pediatric research continues, and non-profit institutional or U.S. or other government agency (Federal, State, or local) support has been assured. Renewal applications are competitively reviewed and the submission of a renewal application does not assure the award of benefits. Funding of renewal contracts is also contingent upon an appropriation and/or allocation of funds from the U.S. Congress and/or the NIH or the NIH Institutes and Centers.

In return for the repayment of their educational loans, participants must agree to (1) engage in qualified pediatric research for a minimum period of two years; (2) engage in such research for at least 50 percent of their time, *i.e.,* not less than 20 hours per week; (3) make payments to lenders on their own behalf for periods of Leave Without Pay (LWOP); (4) pay monetary damages as required for breach of contract; and (5) satisfy other terms and conditions of the LRP contract. Applicants must submit a signed contract, prepared by the NIH, agreeing to engage in qualified pediatric research at the time they submit an application. Substantial monetary penalties will be imposed for breach of contract.

The NIH will repay lenders for the extant principal, interest, and related expenses (such as the required insurance premiums on the unpaid balances of some loans) of qualified U.S. or other government (Federal, State, local), academic institutions, and commercial or other chartered U.S. lending institution educational loans obtained by participants for the following:

(1) Undergraduate, graduate, and health professional school tuition expenses;

(2) Other reasonable educational expenses required by the school(s) attended, including fees, books, supplies, educational equipment and materials, and laboratory expenses; and

(3) Reasonable living expenses, including the cost of room and board, transportation and commuting costs, and other living expenses as determined by the Secretary.

Repayments are made directly to lenders, following receipt of (1) the Principal Investigator, Program Director, or Research Supervisor's verification of completion of the prior period of research, and (2) lender verification of the crediting of prior loan repayments, including the resulting account balances and current account status. The NIH will repay loans in the following order, unless the Secretary determines that significant savings would result from a different order of priority:

(1) Loans guaranteed by the U.S. Department of Health and Human Services:

- Health Education Assistance Loan (HEAL);
- Health Professions Student Loan (HPSL);
- Loans for Disadvantaged Students (LDS); and
- Nursing Student Loan Program (NSL);

(2) Loans guaranteed by the U.S. Department of Education:

- Direct Subsidized Stafford Loan;
- Direct Unsubsidized Stafford Loan;
- Direct Consolidation Loan;
- Perkins Loan;
- FFEL Subsidized Stafford Loan;
- FFEL Unsubsidized Stafford Loan; and
- FFEL Consolidation Loan;

(3) Loans made or guaranteed by a State, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States;

(4) Loans made by academic institutions; and

(5) Private (''Alternative'') Educational Loans:

- MEDLOANS; and
- Private (non-guaranteed) Consolidation Loans.

The following loans are NOT repayable under the Pediatric Research Loan Repayment Program:

(1) Loans not obtained from a U.S. or other government entity (Federal, State, local), academic institution, or a commercial or other chartered U.S. lending institution, such as loans from friends, relatives, or other individuals, and non-educational loans, such as home equity loans;

(2) Loans for which contemporaneous documentation (current account statement, and promissory note or lender disclosure statement) is not available;

(3) Loans that have been consolidated with loans of other individuals, such as a spouse or child;

(4) Loans or portions of loans obtained for educational or living expenses, which exceed a reasonable level, as determined by the standard school budget for the year in which the loan was made, and are not determined by the LRP to be reasonable based on additional contemporaneous documentation provided by the applicant;

(5) Loans, financial debts, or service obligations incurred under the following

programs, or other programs that incur a service obligation that converts to a loan on failure to satisfy the service obligation:

- Armed Forces (Army, Navy, or Air Force) Health Professions Scholarship Program;
- Indian Health Service (IHS) Scholarship Program;
- National Research Service Award (NRSA) Program;
- National Institutes of Health Undergraduate Scholarship Program (UGSP),
- Physicians Shortage Area Scholarship Program (Federal or State);
- Primary Care Loan (PCL) Program; and
- Public Health Service (PHS) and National Health Service Corps (NHSC) Scholarship Program.

(6) Delinquent loans, loans in default, or loans not current in their payment schedule;

(7) PLUS Loans;

(8) Loans that have been paid in full; and

(9) Loans obtained after the execution of the NIH Loan Repayment Program Contract (*e.g.,* promissory note signed after the LRP contract has been awarded).

Before the commencement of loan repayment, or during lapses in loan repayments, due to NIH administrative complications, Leave Without Pay (LWOP), or a break in service, LRP participants are wholly responsible for making payments or other arrangements that maintain loans current, such that increases in either principal or interest do not occur. The LRP contract period will not be modified or extended as a result of Leave Without Pay (LWOP) or a break in service. Penalties assessed participants as a result of NIH administrative complications to maintain a current payment status may not be considered for reimbursement.

LRP payments are NOT retroactive. Loan repayment for Fiscal Year 2003 will commence after a loan repayment contract has been executed, which is expected to be no earlier than June 2003.

Additional Program Information

This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs.

This program is subject to OMB clearance under the requirements of the Paperwork Reduction Act of 1995. The OMB approval of the information collection associated with the Pediatric Research Loan Repayment Program expires on December 31, 2004. The Catalog of Federal Domestic Assistance number for the Pediatric Research LRP is 93.285.

Dated: January 24, 2003.

Elias A. Zerhouni,

Director, NIH.

[FR Doc. 03–7579 Filed 3–28–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Review of Research Program Project Grants.

Date: April 23, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Tracy A. Shahan, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Bethesda, MD 20892, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: March 25, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–7572 Filed 3–28–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging, Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552(b)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel. Imaging of Aging Brain.

*Date:*April 3–4, 2003.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crown Plaza at the United Nations, 304 East 42nd Street, New York, NY 10017.

Contact Person: Ramesh Vemuri, PhD., National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Ave, Suite 2C212, Bethesda, MD 20892, 301–402–7700, rv23r@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, Immunology of Aged T Cells.

Date: April 6–7, 2003.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Empress Hotel, 7766 Fay Ave., La Jolla, CA 92037.

Contact Person: James P. Harwood, PhD., Deputy Chief, Scientific Review Office, Gateway Building 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, (301) 496–9666, *harwoodj@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, Nationa Institutes of Health, HHS).

Dated: March 25, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–7573 Filed 3–28–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel. Clinical Career Developments Awards.

Date: April 28, 2003.

Time: 1:30 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John R. Lymangrover, PhD, Scientific Review Administrator, National Institutes of Health, NIAMS, 6701 Democracy Plaza, Bethesda, MD 20892, 301–594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: March 25, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–7574 Filed 3–28–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Hyperglycemia and Adverse Pregnancy Outcome (HAPO).

Date: April 18, 2003.

Time: 10 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Bldg Rm 5B01, Rockville, MD 20852, (301) 435–6889, *bhatnagg@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: March 25, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–7577 Filed 3–28–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Board of Governors of the Warren Grant Magnuson Clinical Center, March 31, 2003, 9 AM to March 31, 2003, 12 PM, which was published in the **Federal Register** on February 28, 2003, FR 68,40–9703.

The meeting will be held March 31, 2003 and is being changed from open to partially closed. The meeting will be closed from 11:30 to adjournment in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for discussion of personal qualifications and performance, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dated: March 25, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–7576 Filed 3–28–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Advisory Committee on Research on Women's Health, April 7, 2003, 9 a.m. to 5 p.m. and on April 8, 2003 9 a.m.–12 p.m. On April 7, 2003 the meeting is being held in 31 Center Drive, Conference Room 6, Bethesda, Maryland, 20892. On April 8, 2003 the meeting is being held in the Medical Board Room, Clinical Center, Room 2C–116, 10 Center Drive, Bethesda, Maryland, 20892 which was published in the **Federal Register** on March 11, 2003, VOL68;11572–11573.

The meeting will be held on 4/7/2008 and 4/8/2003 in Bethesda, Maryland. The meeting is open to the public, with attendance limited to space available.

Dated: March 25, 2003.

LaVerne Y. Stringfield,

Dierctor, Office of Federal Advisory Committee Policy.

[FR Doc. 03–7575 Filed 3–28–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program (NTP); The NTP Annual Plan for Fiscal Year 2002; Notice of Availability

Summary

The NTP announces the availability of the NTP Annual Plan for Fiscal Year 2002. This report outlines the NTP research program for studying the toxicity of physical and chemical agents and for developing methods for toxicological evaluations. The report also provides information about efforts to develop and validate alternative and improved methods and identifies NTP resource allocations.

Background

The NTP was established within the Public Health Service of the Department of Health and Human Services (DHHS) in November 1978. The NTP is an interagency program whose mission is to evaluate agents of public health concern by developing and applying the tools of modern toxicology and molecular biology. In carrying out its mission, the NTP has several goals to:

- Broaden the spectrum of toxicological information obtained on selected chemicals;
- Develop and validate more sensitive and specific test methods;
- Develop improved strategies for generating scientific data that strengthen the scientific foundation for risk assessments; and
- Communicate NTP plans and results to government agencies, the medical and scientific communities, and the public.

A balanced program was created that includes chronic exposure studies, short-term exposure studies, the collection and application of mechanistic information, model development, alternative methods, and human studies. Scientific activities are divided into several major program areas: carcinogenesis, risk assessment research, alternative test systems, and toxicology. Toxicology covers activities in immunotoxicology, neurobehavioral toxicology, reproductive and developmental toxicology, respiratory toxicology and phototoxicology. Program and project leaders along with contact information are provided in the plan.

The NTP is headquartered at the National Institute of Environmental Health Sciences of the National Institutes of Health (NIEHS/NIH). The NTP consists of the relevant toxicology activities of the NIEHS/NIH, the National Center for Toxicological Research of the Food and Drug Administration and the Centers for Disease Control and Prevention's National Institute for Occupational Safety and Health. The Director of the NIEHS is also the NTP Director.

Availability of the NTP Annual Plan

The NTP Annual Plan for Fiscal Year 2002 is available electronically on the NTP Web site (*http://ntp-server.niehs.nih.gov*). Hard copies are available from the NTP Central Data Management (NIEHS, P.O. Box 12233, MD EC–03, Research Triangle Park, NC 27709; telephone 919–541–3419; fax 919–541–3687; *cdm@niehs.nih.gov*).

Dated: March 20, 2003.

Samuel Wilson,

Deputy Director, NIEHS.

[FR Doc. 03–7581 Filed 3–28–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Office for Women's Services; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Advisory Committee for Women's Services of the Substance Abuse and Mental Health Services Administration (SAMHSA) in April 2003.

The meeting of the Advisory Committee for Women's Services will include welcoming three new members to the Committee, discussion involving SAMHSA's Priorities, Programs and Principles Matrix, activities of the Women, Youth and Families Task Force; and other substance abuse and mental health issues affecting women.

A summary of the meeting and/or a roster of committee members may be obtained from: Nancy P. Brady, Executive Secretary, Advisory Committee for Women's Services, Office for Women's Services, SAMHSA, Parklawn Building, Room 12C–26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–1135.

Attendance by the public will be limited to space available. Public comments are welcome. Please communicate with the individual listed as contact below to make arrangements to comment or to request special accommodations for persons with disabilities.

Substantive information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Advisory Committee for Women's Services.

Meeting Date/Time: Open: April 11, 2003, 9 a.m.–5 p.m.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact: Nancy P. Brady, Executive Secretary, 5600 Fishers Lane, Parklawn Building, Room 12C–26, Rockville, MD 20857. Telephone: (301) 443–1135; FAX: (301) 594–6159 and e-mail: *nbrady@samhsa.gov.*

Dated: March 24, 2003.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–7538 Filed 3–28–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–14686]

Commercial Fishing Industry Vessel Safety Advisory Committee; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the Commercial Fishing Industry Vessel Safety Advisory Committee (CFIVSAC). CFIVSAC advises and makes recommendations to the Coast Guard on the safety of the commercial fishing industry.

DATES: Application forms should reach us on or before July 20, 2003.

ADDRESSES: You may request an application form by writing to Commandant (G–MOC–3), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001; by calling 202–267–0315; or by faxing 202–267–0506; or by emailing *kfrost@comdt.uscg.mil.* Send your application in written form to the above street address. This notice and the application form are available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Commander Joseph A. Servidio, Executive Director of CFIVSAC, or Kevin Frost, Assistant to the Executive Director, telephone 202–267–0315, fax 202–267–0506, e-mail: *kfrost@comdt.uscg.mil* or *http://www.uscg.mil/hq/gm/cfvs/cfivac.htm.*

SUPPLEMENTARY INFORMATION: The Commercial Fishing Industry Vessel Safety Advisory Committee (CFIVSAC) is a Federal advisory committee under 5 U.S.C. App. 2. As required by the Commercial Fishing Industry Vessel Safety Act of 1988, the Coast Guard established CFIVSAC to provide advice to the Coast Guard on issues related to the safety of commercial fishing vessels regulated under chapter 45 of Title 46, United States Code, which includes uninspected fishing vessels, fish processing vessels, and fish tender vessels. (*See* section 4508 of title 46 of the U.S. Code, 46 U.S.C. 4508).

CFIVSAC consists of 17 members as follows: Ten members from the commercial fishing industry who reflect a regional and representational balance and have experience in the operation of vessels to which chapter 45 of Title 46, United States Code applies, or as a crew member or processing line member on an uninspected fish processing vessel; one member representing naval

architects or marine surveyors; one member representing manufacturers of vessel equipment to which chapter 45 applies; one member representing education or training professionals related to fishing vessel, fish processing vessels, or fish tender vessel safety, or personnel qualifications; one member representing underwriters that insure vessels to which chapter 45 applies; and three members representing the general public, including whenever possible, an independent expert or consultant in maritime safety and a member of a national organization composed of persons representing the marine insurance industry.

CFIVSAC meets at least once a year in different seaport cities nationwide. It may also meet for extraordinary purposes. Its subcommittees and working groups may meet to consider specific problems as required.

We will consider applications for six positions that expire or become vacant in October 2003 in the following categories: (a) Commercial Fishing Industry (four positions); (b) Naval Architect (one position); (c) General Public (one position).

Each member serves a 3-year term. A few members may serve consecutive terms. All members serve at their own expense and receive no salary from the Federal Government, although travel reimbursement and per diem are provided.

In support of the policy of the Department of Homeland Security on gender and ethnic diversity, we encourage qualified women and members of minority groups to apply.

If you are selected as a member representing the general public, you are required to complete a Confidential Financial Disclosure Report (OGE Form 450). We may not release the report or the information in it to the public, except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a).

Dated: March 12, 2003.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security & Environmental Protection.

[FR Doc. 03–7542 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–14706]

Chemical Transportation Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The Chemical Transportation Advisory Committee (CTAC) and its Hazardous Cargo Transportation Security Subcommittee will meet to discuss various issues relating to the marine transportation of hazardous materials in bulk. These meetings will be open to the public.

DATES: CTAC will meet on Thursday, April 17, 2003, from 9 a.m. to 3:30 p.m. The Subcommittee on Hazardous Cargo Transportation Security will meet on Monday, April 14, 2003, from 1 p.m. to 4 p.m., Tuesday, April 15, 2003, from 8 a.m. to 4 p.m., Wednesday, April 16, 2003, from 8 a.m. to 4 p.m. These meetings may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before April 7, 2003. Requests to have a copy of your material distributed to each member of the Committee should reach the Coast Guard on or before April 7, 2003.

ADDRESSES: CTAC will meet at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC, in room 2415. The Subcommittee on Hazardous Cargo Transportation Security will meet at Department of Transportation Headquarters, Nassif Building, 400 7th Street, SW., Washington, DC, in room 6244. Send written material and requests to make oral presentations to Commander James M. Michalowski, Executive Director of CTAC, Commandant (G–MSO–3), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Commander James M. Michalowski, Executive Director of CTAC, or Ms. Sara Ju, Assistant to the Executive Director, telephone 202–267–1217, fax 202–267–4570.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Subcommittee Meeting on April 14–16, 2003

(1) Introduction of Subcommittee members and attendees.

(2) Discussion of inland vessel tracking system.

(3) Discussion of security communications.

(4) Discussion of security training.

(5) Discussion of security drills and exercises.

(6) Discussion of outreach initiatives concerning U.S. Coast Guard security regulations.

Agenda of CTAC Meeting on Thursday, April 17, 2003

(1) Introduction of Committee members and attendees.

(2) Status reports from the Charter Revision and Outreach Workgroups.

(3) Status report from the Hazardous Cargo Transportation Security Subcommittee.

(4) Presentation by the American Chemistry Council on their security initiatives.

(5) Presentation by the Coast Guard's Office of Port, Vessel, and Facility Security (G–MPS).

(6) Presentation by the Coast Guard's Office of Response on the development of the Comprehensive Hazardous Chemical Spill Response Guide.

(7) Presentation by the Coast Guard's Office of Standards Evaluation and Development on the Coast Guard's regulatory process.

(8) Update of Coast Guard Regulatory Projects and IMO Activities.

Procedural

These meetings are open to the public. Please note that the meetings may close early if all business is finished. At the discretion of the Chair, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Executive Director and submit written material on or before April 7, 2003. If you would like a copy of your material distributed to each member of the Committee in advance of a meeting, please submit 25 copies to the Executive Director (see **ADDRESSES**) no later than April 7, 2003.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, telephone the Executive Director as soon as possible.

Dated: March 13, 2003.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 03–7543 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–14750]

National Boating Safety Advisory Council

AGENCY: Coast Guard, DHS.

ACTION: Notice of meetings.

SUMMARY: The National Boating Safety Advisory Council (NBSAC) and its subcommittees on regulatory review III of recreational boating safety regulations, boats and associated equipment, aftermarket marine equipment, and prevention through people will meet to discuss various issues relating to recreational boating safety. All meetings will be open to the public.

DATES: NBSAC will meet on Monday, April 28, 2003, from 8:30 a.m. to 5 p.m. and Tuesday, April 29 from 8:30 a.m. to 12 noon. The Recreational Boating Safety Regulatory Review III Subcommittee will meet on Saturday, April 26, 2003, from 1 p.m. to 5 p.m. The Boats and Associated Equipment Subcommittee will meet on Sunday, April 27, 2003, from 9 a.m. to 12 noon. The Aftermarket Marine Equipment Subcommittee will meet on Sunday, April 27, 2003, from 1 p.m. to 3 p.m. The Prevention Through People Subcommittee will meet on Sunday, April 27, 2003, from 3:30 p.m. to 5:30 p.m. These meetings may close early if all business is finished. On Sunday, April 27, a Subcommittee meeting may start earlier if the preceding Subcommittee meeting has closed early. Written material and requests to make oral presentations should reach the Coast Guard on or before April 15, 2003. Requests to have a copy of your material distributed to each member of the committee or subcommittees should reach the Coast Guard on or before April 7, 2003.

ADDRESSES: NBSAC will meet at the Holiday Inn Rosslyn at Key Bridge, 1900 N. Fort Meyer Drive, Arlington, VA 22209. The subcommittee meetings will be held at the same address. Send written material and requests to make oral presentations to Mr. Jeff Hoedt, Executive Director of NBSAC, Commandant (G–OPB–1), US. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov* under docket USCG–2003–14750 or at the Web Site for the Office of Boating Safety at URL address www.uscgboating.org.

FOR FURTHER INFORMATION CONTACT: Jeff Hoedt, Executive Director of NBSAC, telephone 202–267–0950, fax 202–267–4285. You may obtain a copy of this notice by calling the U.S. Coast Guard Infoline at 1–800–368–5647.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Tentative Agendas of Meetings

National Boating Safety Advisory Council (NBSAC). The agenda includes the following:

(1) Remarks—Rear Admiral Jeffrey J. Hathaway, Director of Operations Policy and Council Sponsor.

(2) Chief, Office of Boating Safety Update on NBSAC Resolutions.

(3) Executive Director's report.

(4) Chairman's session.

(5) Recreational Boating Safety Regulatory Review III Subcommittee report.

(6) Boats and Associated Equipment Subcommittee report.

(7) Aftermarket Marine Equipment Subcommittee report.

(8) Prevention Through People Subcommittee report.

(9) Recreational Boating Safety Program report.

(10) Coast Guard Auxiliary report.

(11) Canadian Coast Guard report.

(12) National Association of State Boating Law Administrators Report.

(13) Wallop Breaux reauthorization update.

(14) Presentation on Canoe and Kayak Safety Issue.

(15) Report on Boating Safety Interventions for Anglers and Hunters.

(16) Update on Risk-based Approval Process for Personal Flotation Devices (PFDs) (Former Personal Flotation Device-Life Saving Index (PFD–LSI).) and development of PFD design and evaluation tools—manikin family and computer model.

(17) Presentation on USCG Maritime Security Rulemaking Effort.

Recreational Boating Safety Regulatory Review III Subcommittee. The agenda includes the following:

(1) Review recreational boating safety regulations concerning requirements for operators of recreational vessels (33 CFR parts 95, 100, 173, 174, 175, 177, 181 (subparts A and G), 187 and 46 CFR part 25 (subpart 25.30), and part 58 (subparts 58.03 and 58.10).

(2) Present recommendations to the Council as to whether the current recreational boating safety regulations need to be changed or removed based on a review of need, technical accuracy, cost/benefit, problems and alternatives.

Boats and Associated Equipment Subcommittee. The agenda includes the following: Discuss current regulatory projects, grants, contracts and new issues impacting boats and associated equipment.

Aftermarket Marine Equipment Subcommittee. The agenda includes the following: Discuss current regulatory projects, grants, contracts and new issues impacting aftermarket marine equipment.

Prevention Through People Subcommittee. The agenda includes the following: Discuss current regulatory projects, grants, contracts and new issues impacting prevention through people.

Procedural

All meetings are open to the public. Please note that the meetings may close early if all business is finished. At the Chairs' discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Executive Director no later than April 14, 2003. Written material for distribution at a meeting should reach the Coast Guard no later than April 7, 2003. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of a meeting, please submit 25 copies to the Executive Director no later than April 7, 2003.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: March 24, 2003

Jeffrey J. Hathaway,

Rear Admiral, Coast Guard, Director of Operations Policy.

[FR Doc. 03–7544 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection to be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; OMB Control Number 1018–0093, Applications for Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service (We) will submit the collection of information described below to OMB for approval under the provisions of the Paperwork Reduction Act. An estimate of the information collection burden is included in this notice. If you wish to obtain copies of the proposed information collection requirement, related forms, and/or explanatory material, contact the Service Information Collection Clearance Officer at the address listed below.

DATES: You must submit comments on or before May 30, 2003.

ADDRESSES: Send your comments and suggestions on specific requirements to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 222–ARLSQ, 4401 N. Fairfax Drive, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection submission, explanatory information, and/or related forms, contact Anissa Craghead, Information Collection Clearance Officer at 703–358–2445, electronically at *Anissa_Craghead@fws.gov,* or Amy Brisendine at 703–358–2104 ext. 5100, electronically at *Amy_Brisendine@fws.gov.*

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies be given an opportunity to comment on information collection and record keeping activities (see 5 CFR 1320.8(d)). We are submitting a request to OMB to approve: (1) The revision of the collection of information for many of the Service's permit applications (Form numbers 3–200–19 through 3–200–37, 3–200–39 through 3–200–53, and 3–200–58, currently approved under OMB control number 1018–0093); (2) the addition of forms 3–200–64 through 3–200–66, and 3–200–73; and (3) the deletion of forms 3–200–38 and 3–200–51. All of these forms are used by the Division of Management Authority, International Affairs. We are requesting a three-year term of approval for this information collection activity. Federal agencies may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1018–0093.

Revisions to the currently approved forms include modification of the format and content of the application forms so that they will be easier to understand and easier for the applicant to complete. We are removing one application form (3–200–38, Import of Wildlife Samples, CITES and/or ESA) from the information collection approval request because it is being combined with form 3–200–29, Import/Export/Re-Export of Samples (Wildlife and/or Biomedical Samples) (CITES and/or ESA). We are also removing Form 3–200–51, Approval of a Foreign Breeding Facility Under WBCA, from the information collection approval request because the regulations (50 CFR 15.41) have not yet been developed. Five new forms have been added to the information collection in order to simplify the information collection process on the public in terms of reporting requirements. The new forms (3–200–58, 3–200–64 through 3–200–66, and 3–200–73) are noted in the table below. In addition, we are requesting that Form 3–200–26, which is currently approved under OMB control number 1018–0092, be transferred to this collection.

We invite comments concerning this renewal on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden on the public; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond. The information collections in this program are part of a system of records covered by the Privacy Act (5 U.S.C. 552 (a)).

The information obtained from the applications for permits will be used to determine the eligibility of applicants for permits they are requesting according to criteria in various Federal wildlife conservation laws, international treaties, and regulations on the issuance, suspension, revocation, or denial of permits.

The information collection requirements in this submission implement the regulatory requirements of the Endangered Species Act (16 U.S.C. 1531 *et seq.*), the Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*), the Lacey Act (16 U.S.C. 3371 *et seq.*), the Bald and Golden Eagle Protection Act (16 U.S.C. 668), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (27 U.S.T. 1087), the Marine Mammal Protection Act (16 U.S.C. 1361–1407 *et seq*), and the Wild Bird Conservation Act (16 U.S.C. 4901–4916 *et seq*), and are contained in Service regulations in Chapter I, Subchapter B of Title 50 Code of Federal Regulations (CFR). Generic permit application and record keeping requirements shared by our permit-issuing offices have been consolidated in 50 CFR part 13. The following table lists the application forms, with their respective burden estimates and applicable regulations, that we plan to submit to OMB for approval under the Paperwork Reduction Act.

Application No.	Activity	Total number of respondents annually	Estimated time to complete application (hours)	Total annual public reporting burden (hours)	Applicable regulation(s)
3–200–19	Import of Sport-hunted Trophies of Southern African Leopard, African Elephant, and Namibian Southern White Rhinoceros.	880	0.3	264	50 CFR 17.40(e), 17.40(f), 23.11, 23.12, and 23.15
3–200–20	Import of Sport-Hunted Trophies (Appendix I of CITES and/or ESA).	50	1.0	50	50 CFR 17.21, 17.22, 17.31, 17.32, 23.11, and 23.15
3–200–21	Import of Sport-Hunted Trophies of Argali	220	0.8	165	50 CFR 17.31, 17.32 and 17.40(j)
3–200–22	Import of Sport-Hunted Bontebok Trophies	110	0.3	33	50 CFR 17.21 and 17.22
3–200–23	Export of Pre-Convention, Pre-Act, or Antique Specimens (CITES and/or ESA).	300	0.7	210	50 CFR 14.22, 17.4, 18.14, 23.11, 23.13(c), and 23.15
3–200–24	Export of Live Captive-Born Animals (CITES).	450	0.7	315	50 CFR 23.11, 23.12 and 23.15
3–200–25	Export of Raptors	100	1.0	100	50 CFR 21.21, 21.29, 23.11, 23.12 and 23.15

Application No.	Activity	Total number of respondents annually	Estimated time to complete application (hours)	Total annual public reporting burden (hours)	Applicable regulation(s)
3–200–26	Export of Skins/Products of Six Native Species: bobcat, lynx, river otter, Alaskan brown bear, Alaskan gray wolf, and American alligator (CITES).	3760	0.3	1128	50 CFR 23.11, 23.12 and 23.15
3–200–27	Export of Wildlife Removed from the Wild (CITES).	10	0.7	7	50 CFR 23.11, 23.12 and 23.15
3–200–28	Export/Re-Export of Trophies by Hunters or Taxidermists (CITES).	60	0.5	30	50 CFR 23.11, 23.12 and 23.15
3–200–29	Import/Export/Re-Export of Samples (Wildlife and or Biomedical) (CITES and/or ESA).	600	1.5	615	50 CFR 17.21, 17.22, 17.31, 17.32, 23.11, 23.12, 23.13 and 23.15
3–200–30	Export/Re-import of Circuses and Traveling Animal Exhibitions.	230	1.0	230	50 CFR 17.21, 17.22, 17.31, 17.32, 23.11, 23.12, 23.13 and 23.15
3–200–31	Introduction from the Sea (CITES)	40	2.0	80	50 CFR 23.11, 23.12, and 23.15
3–200–32	Export/Re-Export of Plants (CITES)	180	1.0	180	50 CFR 23.11, 23.12, 23.13 and 23.15
3–200–33	Export of Artificially Propagated Plants (Multiple-use).	100	2.0	200	50 CFR 17.61, 17.62, 17.71, 17.72, 23.11, 23.12, 23.13 and 23.15
3–200–34	Export of American Ginseng*	70	0.3	21	50 CFR 23.11, 23.12, 23.13, 23.15 and 23.51
3–200–35	Import of Appendix-I Plants (CITES)	10	1.0	10	50 CFR 23.11, 23.12, 23.13 and 23.15
3–200–36	Export/Import/Interstate and Foreign Commerce of Plants (ESA and/or CITES).	5	1.0	5	50 CFR 17.61, 17.62, 17.71, 17.72, 23.11, 23.12 and 23.15
3–200–37	Export/Import/Interstate and Foreign Commerce/Take of Animals (ESA and/or CITES).	230	2.0	460	50 CFR 17.21, 17.22, 17.31, 17.32, 23.11, 23.12 and 23.15
3–200–39	Certificate of Scientific Exchange (CITES)*	20	1.0	20	50 CFR 23.11, 23.13(g) and 23.15
3–200–40	Export and Re-import of Museum Specimens (ESA)*.	10	1.0	10	50 CFR 17.21, 17.22, 17.31, 17.32, 17.61, 17.62, 17.71 and 17.72
3–200–41	Captive-Bred Wildlife Registration*	300	2.0	600	50 CFR 17.21(g) and 17.31
3–200–42	Import/Transport of Injurious Wildlife	35	2.0	70	50 CFR 16.22
3–200–43	Take/Import/Transport/Export of Marine Mammals or Amendment of Existing Permit*.	100	4.0	400	50 CFR 18.11, 18.22, 18.31, 17.21, 17.22, 17.31, 17.32, 23.11, 23.12, 23.13 and 23.15
3–200–44	Registration of an Agent/Tannery (MMPA)*	20	0.5	10	50 CFR 18.11, 18.12 and 8.23(d)
3–200–45	Import of Polar Bear Trophies Sport Hunted in Canada.	60	0.5	30	50 CFR 18.11, 18.12 and 18.30
3–200–46	Import or Export of Personal Pets (CITES and/or WBCA).	440	0.5	220	50 CFR 15.11, 15.12, 15.21 and 15.25
3–200–47	Import of Birds for Scientific Research or Zoological Breeding and Display (WBCA).	50	2.0	100	50 CFR 15.11, 15.12, 15.21, 15.22 and 15.23
3–200–48	Import of Birds Under an Approved Cooperative Breeding Program (WBCA)*.	20	1.0	20	50 CFR 15.11, 15.12, 15.21 and 15.24
3–200–49	Approval of a Cooperative Breeding Program (WBCA).	10	3.0 3	0	50 CFR 15.11, 15.12, 15.21 and 15.26
3–200–50	Approval of Sustainable Use Management Plan Under WBCA.	1	10	10	50 CFR 15.11, 15.12, 15.21 and 15.32
3–200–51	Approval of Sustainable Use Management Plan Under WBCA.	1	8	8	50 CFR 15.11, 15.12, 15.21 and 15.41
3–200–52	Reissuance or Renewal of a Permit	200	0.3	50	50 CFR 13.21 and 13.22
3–200–53	Export/Re-Export of Captive-Held Marine Mammals (CITES).	20	2.0	40	50 CFR Part 18, 23.11, 23.12, 23.13 and 23.15

Application No.	Activity	Total number of respondents annually	Estimated time to complete application (hours)	Total annual public reporting burden (hours)	Applicable regulation(s)
3–200–58	Retrospective Documents**	50	1.0	50	50 CFR 23.11, 23.15
3–200–64	Certificate of Ownership for Personally Owned Wildlife ''Pet passport'' (CITES)**.	400	0.5	200	50 CFR 23.11, 23.15
3–200–65	Registration of Appendix-I Commercial Breeding Operations (CITES)**.	15	44.5	245	50 CFR 23.11, 23.15
3–200–66	Replacement Documents (CITES)**	50	0.5	25	23.11, 23.15
3–200–73	Re-Export of Wildlife (CITES)**	300	0.5	150	50 CFR 23.11, 23.12 and 23.15
Total Hours		9507		6391	

* **Note:** There is a reporting requirement associated with the issuance of permits granted as a result of this information collection which is included in the estimated burden. Required information to be submitted is outlined on the corresponding permits issued.
** **Note:** These are new forms.

Title: Federal Fish and Wildlife Permit Application, Management Authority.

OMB Number: 1018–0093.

Service Form Numbers: 3–200–19 through 3–200–37, 3–200–39 through 3–200–53 and 3–200–58, 3–200–64 through 3–200–66, and 3–200–73.

Frequency of Collection: On occasion.

Description of Respondents: Individuals, biomedical companies, circuses, zoological parks, botanical gardens, nurseries, museums, universities, scientists, antique dealers, exotic pet industry, hunters, taxidermists, commercial importers/exporters of wildlife and plants, freight forwarders/brokers, local, State, tribal and Federal governments.

Total Annual Responses: 9507 responses.

Total Annual Burden Hours: 6391 hours.

Dated: March 14, 2003.

Charlie R. Chandler,

Chief, Branch of Permits—Domestic, Division of Management Authority.

[FR Doc. 03–7568 Filed 3–28–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by April 30, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

PRT–069356

Applicant: Philip Dudley, Upperville, VA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–069332

Applicant: Miami Metrozoo, Miami, Florida.

The applicant requests a permit to export one live male Komodo island monitor (*Varanus komodoensis*) to the Zoologico Guadalajara, Mexico for the purpose of conservation education and enhancement of the survival of the species.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: March 21, 2003.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–7563 Filed 3–28–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by April 30, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive,

Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

PRT–064172

Applicant: Exotic Feline Breeding Compound, Inc., Rosamond CA.

The applicant request a permit to export one male captive-born jaguar (*Panthera onca*) to the Singapore Zoological Gardens, Singapore, for the purpose of enhancement of the survival of the species through captive propagation and conservations education.

PRT–068724

Applicant: Albert Schweizer, Reistertown, MD.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–068750

Applicant: Wayne M. Knapp, Syracuse, NY.

The applicant requests a permit to import the sport-hunted trophy of one male bontetok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–068778

Applicant: Samuel G. Spicer, Dallas, TX.

The applicant request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–068868

Applicant: Thomas U. Dudley, Upperville, VA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–063832

Applicant: Racine Zoological Gardens, Racine, WI.

The applicant request a permit to re-export and return a captive born tiger (*Panthera tigris*) to the Parken Zoo, Eskilstuna, Sweden, for the purpose of enhancement of the species through conservation education. This animal is being returned to the facility from which it originated.

PRT–06892

Applicant: National Geographic Society, Washington, DC.

The applicant requests a permit to import biological samples from wild specimens of American crocodile (*Crocoylus acutus*), taken from the Tarcoles River, Costa Rica, for the purpose of enhancement of the survival of the species through scientific research.

PRT–057398

Applicant: The Zoological Society of San Diego, San Diego, CA.

The applicant requests a permit to import wild live specimens and biological samples of California condors (*Gymnogyps californianus*) for the purpose of enhancement of the survival of the species through reintroduction to Sierra San Pedro Martir, Baja California, Mexico. This notification covers activities conducted by the applicant over a five year period. Permittee must annually apply for renewal.

PRT–068198

Applicant: Zoological Society of San Diego, San Diego Wild Animal Park, Escondido, CA.

The applicant request a permit to export one male captive born greater Indian one-horned rhinoceros (*Rhinoceros unicornis*) to the Warsaw Zoo, Poland, for the purpose of enhancement of the survival of the species through captive propagation.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: March 7, 2003.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Managment Authority.

[FR Doc. 03–7564 Filed 3–28–03; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by April 30, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

PRT–030791

Applicant: Scovill Zoo, Decatur, IL

The applicant requests a permit to import two male captive-born cheetahs (*Acinonyx jubatus*) from De Wildt Cheetah and Wildlife Centre, De Wildt, South Africa for the purpose of

enhancement of the species through conservation education.

PRT–765658, 809334, 068882, 068908

Applicant: Ferdinand F. and Anton F. Hantig, dba Fercos, Las Vegas, NV

The applicant requests permits to export captive born tigers (*Panthera tigris*) and leopards (*Panthera pardus*) to worldwide locations for the purpose of enhancement of the species through conservation education. The permit numbers and animals are: 765658, Indy; 809334, Sarina; 068882, Rama; and 068908, Astar. This notification covers activities conducted by the applicant over a three-year period and the import of any potential progeny born while overseas.

PRT–066667

Applicant: Thomas D. Klug, Watertown, WI

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–068965

Applicant: SEA—EL CARMEN, Houston, TX

The applicant requests a permit to import biological samples obtained from Hawksbill sea turtles (*Eretmochelys imbricata*) collected in the wild in Mexico, for the purpose of enhancement of the species through scientific research. This notification covers activities conducted by the applicant over a five-year period.

PRT–054484, 065144, 065145, 065146, 065147, 065148, 065149

Applicant: Tarzan Zerbini Circus, Webb City, MO

The applicant requests permits to re-export wild and captive born Asian elephants (*Elephas maximus*) to worldwide locations for the purpose of enhancement of the species through conservation education. The permit numbers and animals are: 054484, Luke; 065144, Jan; 065145, Roxy; 065146, Schell; 065147, Peggy; 065148, Bunny; and 065149, Marie. This notification covers activities conducted by the applicant over a three-year period and the import of any potential progeny born while overseas.

Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with marine mammals. The application(s) was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

PRT–069177

Applicant: Felix F. Gardina, Ghent, NY

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Southern Beaufort Sea polar bear population in Canada for personal use.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: March 14, 2003.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–7566 Filed 3–28–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). We (U.S. Fish and Wildlife Service) solicit review and comment from local, State, and Federal agencies, and the public on the following permit requests.

DATES: Comments on these permit applications must be received on or before April 30, 2003, to receive our consideration.

ADDRESSES: Written data or comments should be submitted to the Chief, Endangered Species, Ecological Services, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (fax: 503–231–6243). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above (telephone: 503–231–2063). Please refer to the respective permit number for each application when requesting copies of documents.

SUPPLEMENTARY INFORMATION:

Permit No. TE–832717

Applicant: Rod Dossey, Encinitas, California.

The permittee requests an amendment to remove/reduce to possession (collect) the *Arctostaphylos glandulosa* ssp. *crassifolia* (Del Mar manzanita), *Chorizanthe orcuttiana* (Orcutt's spineflower), *Ambrosia pumila* (San Diego ambrosia), and *Fremontodendron mexicanum* (Mexican flannelbush) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing their survival.

Permit No. TE–067992

Applicant: Daniel Dugan, Morro Bay, California.

The applicant requests a permit to take (harass by survey) the Morro shoulderband snail (*Helminthoglypta walkeriana*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–067990

Applicant: Barbie Dugan, Morro Bay, California

The applicant requests a permit to take (harass by survey) the Morro shoulderband snail (*Helminthoglypta walkeriana*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–036499

Applicant: Golden Gate National Recreation Area, San Francisco, California.

The permittee requests an amendment to take (harass by survey) the Mission blue butterfly (*Icaricia icaroides missionensis*) in conjunction with surveys within the Golden Gate National Recreation Area in California for the purpose of enhancing its survival.

Permit No. TE–068140

Applicant: Laird A. Henkel, Aptos, California.

The applicant requests a permit to take (locate and monitor nests) the California least tern (*Sterna antillarum browni*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–061375

Applicant: Renee Spenst, Sacramento, California.

The permittee requests an amendment to take (harass) the California clapper rail (*Rallus longirostris obsoletus*) and the salt marsh harvest mouse (*Reithrodontomys raviventris*) in conjunction with scientific research in Napa County, California for the purpose of enhancing their survival.

Permit No. TE–068072

Applicant: Philippe Vergne, Ramona, California.

The applicant requests a permit to take (capture) the Stephens' kangaroo rat (*Dipodomys stephensi*), the San Bernardino kangaroo rat (*Dipodomys merriami parvus*), and the Pacific pocket mouse (*Perognathus longimembris pacificus*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing their survival.

Permit No. TE–038701

Applicant: Bonnie Peterson, Lakeside, California.

The permittee requests an amendment to take (locate and monitor nests and band) the California least tern (*Sterna antillarum browni*) and the least Bell's vireo (*Vireo bellii pusillus*), and to take (harass by survey, locate and monitor nests, and band) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with surveys in San Diego County, California for the purpose of enhancing their survival.

Permit No. TE–068743

Applicant: University of California Botanical Garden, Berkeley, California.

The applicant requests a permit to remove/reduce to possession (collect) the *Calystegia stebbinsii* (Stebbin's morning-glory), *Fremontodendron californicum* ssp. *decumbens* (Pine Hill flannelbush), and *Galium californicum* ssp. *sierrai* (El Dorado bedstraw) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing their survival.

We solicit public review and comment on each of these recovery permit applications.

Dated: March 7, 2003.

Rowan W. Gould,

Deputy Regional Director, Region 1, Fish and Wildlife Service.

[FR Doc. 03–7590 Filed 3–28–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application

SUMMARY: We announce our receipt of an application to conduct certain activities pertaining to scientific research and enhancement of survival of endangered species.

DATES: Written comments on this request for a permit must be received April 30, 2003.

ADDRESSES: Written data or comments should be submitted to the Assistant Regional Director-Ecological Services, U.S. Fish and Wildlife Service, PO Box 25486, Denver Federal Center, Denver, Colorado 80225–0486; telephone 303–236–7400, facsimile 303–236–0027.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone 303–236–7400.

SUPPLEMENTARY INFORMATION: The following applicant has requested issuance of a scientific research and enhancement of survival permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

TE–067729

Applicant: Keith B. Gido, Kansas State University, Manhattan, Kansas.

The applicant requests a permit to take Topeka shiners (Notropis topeka) in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Dated: March 14, 2003.

Mary G. Henry,

Acting Regional Director, Denver, Colorado.

[FR Doc. 03–7595 Filed 3–28–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permit for marine mammals.

SUMMARY: The following permit was issued.

ADDRESSES: Documents and other information submitted for this application is available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: On April 18, 2002, a notice was published in the **Federal Register** (67 FR 19206), that an application had been filed with the Fish and Wildlife Service by Harry M. League for a permit (PRT–055029) to import one polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population, Canada, for personal use.

Notice is hereby given that on March 10, 2003, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

Dated: March 21, 2003.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–7565 Filed 3–28–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permit for marine mammals.

SUMMARY: The following permit was issued.

ADDRESSES: Documents and other information submitted for this application is available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: On September 30, 2002, a notice was published in the **Federal Register** (67 FR 61349), that an application had been filed with the Fish and Wildlife Service by Olds D. Schupp for a permit (PRT–061560) to import one polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population, Canada, for personal use.

Notice is hereby given that on February 24, 2003, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

Dated: March 14, 2003.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–7567 Filed 3–28–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Roll Submitted by the Little Traverse Bay Band of Odawa Indians

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Pursuant to section 9(b)(2) of Public Law 103–324, 108 Stat. 2156, as amended, notice is given of receipt of the membership list of the Little Traverse Bay Band of Odawa Indians, containing 2,239 names of tribal members.

FOR FURTHER INFORMATION CONTACT: Anne E. Bolton, Field Representative, Michigan Field Office, 2901.5 I–75 Business Spur, Sault Ste. Marie, Michigan 49783, Telephone number (906) 632–6809.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

The membership roll was received at the Bureau of Indian Affairs, Michigan Agency, on May 2, 1996. After review, the following corrections to the roll were made: Six names that were left off the initial roll were added, four names were removed due to being denied membership, nine people were removed due to membership in another tribe, two names were removed due to relinquishment prior to May 2, 1996 and three people were removed due to a change in the enrollment date. The corrected list containing the names of 2,239 tribal members was approved by Tribal Council Resolution # 072102–02 and received in the Michigan Field Office on August 1, 2002.

Dated: March 13, 2003.

Aurene M. Martin,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 03–7619 Filed 3–28–03; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proclaiming Certain Lands as Reservation for the Confederated Tribes of Siletz Indians of Oregon

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of reservation proclamation.

SUMMARY: The Assistant Secretary—Indian Affairs proclaimed approximately 10.70 acres, more or less, as an addition to the Siletz Indian Reservation for the Confederated Tribes of Siletz Indians of Oregon on March 12, 2003. This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

FOR FURTHER INFORMATION CONTACT: Larry E. Scrivner, Bureau of Indian Affairs, Division of Real Estate Services, MS–4512/MIB/Code 220, 1849 C Street, NW., Washington, DC 20240, telephone (202) 208–7737.

SUPPLEMENTARY INFORMATION: A proclamation was issued according to the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 467), for four tracts of land described below. The land was proclaimed to be an addition to and part of the Siletz Indian Reservation for the exclusive use of Indians on that reservation who are entitled to reside at the reservation by enrollment or tribal membership.

Siletz Indian Reservation

Lincoln County, Oregon

Tract 1

A tract of land lying within Lots 14 and 15, Block 6, Siletz Townsite, Lincoln County Oregon, described as follows:

Beginning at the southwest corner of Lot 15, Block 6, Siletz Townsite, located in the northeast one-quarter of Section 9, Township 10 south, Range 10 west, Willamette Meridian in Lincoln County, Oregon, said corner being on the easterly Right-Of-Way of Gaither Street; thence north 89 deg. 59′ 43″ east, along the south boundary of Lot 15, a distance of 165.96 feet to the southeast corner of the tract described in Book 177, page 1838, recorded December 30, 1986; thence north 00 deg. 05′ 01″ west along the eastline of said Book 177, page 1838, to the southerly Right-Of-Way of East Logsden Road, a distance of 70.04 feet; thence south 89 deg. 58′ 26″ west, along said Right-Of-Way to the easterly Right-Of-Way of Gaither Street, a distance of 165.94 feet; thence south 00 deg. 04′ 24″ east, along said Right-Of-Way, a distance of 69.98 feet to the point of beginning. Containing 0.27 acres more or less.

Tract 2

A tract of land lying within Lots 14, 15, 16 and Tract C of Block 6, Siletz Townsite, a duly recorded subdivision plat, which is the northeast quarter, Section 9, Township 10 south, Range 10 west, Willamette Meridian, Lincoln County, Oregon. Said parcel being more particularly described in accordance with Lincoln County Survey Record Number 13,943 as follows:

Beginning at a ⅝ inch by 30 inch iron rebar set flush, with yellow plastic cap inscribed ''VILES LS 2029'', which is at the intersection of the southeasterly line of Tract C (formally Power Site Reserve No. 181) and the south line of East Logsden Road; thence south 31 deg. 30′ 05″ west along above said southeasterly line of Tract C, 154.51 feet to a ½ inch by 27 inch iron rebar at the northeast corner of the Clark Tract described in instrument recorded June 11, 1997, Book 338, Page 2170; thence leaving above said line north 58 deg. 29′ 55″ west 100.05 feet along the north line of said Clark Tract to a ½-inch iron rebar, which is on the northwesterly line of above said Tract C; thence south 31 deg. 30′ 36″ west along above said northwesterly line of Tract C, 24.22 feet to a ⅝ inch by 30 inch iron rebar set flush, with yellow plastic cap inscribed ''VILES LS 2029'', said point being the northeast corner of the Blackwood Tract described in instrument, recorded May 25, 1993, Book 262, page 183; thence leaving above said line south 89 deg. 59′ 58″ west 58.52 feet along said Blackwood line to a ⅝ inch by 30 inch

iron rebar set flush, with yellow plastic cap inscribed ''VILES LS 2029'', said point being a corner of said Blackwood Tract; thence north 00 deg. 04′ 38″ west 30.00 feet to a ⅝ inch by 30 inch iron rebar set flush, with yellow plastic cap inscribed ''VILES LS 2029'', which is on the line common to Lot 15 and Lot 16, Block 6, Siletz Townsite; thence continuing north 00 deg. 04′ 38″ west 70.01 feet to a ⅝ inch by 30 inch iron rebar set flush, with yellow plastic cap inscribed ''VILES LS 2029'', which is on the above said south line of East Logsden Road; thence along above said south line north 89 deg. 58′ 35″ east 120.00 feet to a ⅝-inch iron rebar which is at the above said northwesterly line of Tract C; thence continuing along above said south line north 89 deg. 58′ 35″ east 117.36 feet to the beginning point. Containing 0.48 acres more or less.

Tract 3

Parcel III A tract of land located in U.S. Lots 17 and 32, Section 4, Township 10 south, Range 10 west, Willamette Meridian and U.S. Lot 24, Section 3, Township 10 south, Range 10 west, Willamette Meridian, in Lincoln County, Oregon, being more particularly described as follows:

Beginning at the northwest corner of U.S. Lot 32, Section 4, Township 10 south, Range 10 west; thence south 00 deg. 38′ 26″ west, along the westerly line of U.S. Lot 32 to the northerly Right of Way of County Road No. 406 (also known as ''Old River Road''), a distance of 157.92 feet; thence continuing on said Right of Way along the arc of a 411.97 foot radius curve to the right (the short chord of which bears north 47 deg. 46′ 42″ east, 56.56 feet), a distance of 56.60 feet; thence north 51 deg. 47′ 10″ east, a distance of 111.95 feet; thence along the arc of a 331.56 foot radius curve to the right (the long chord of which bears north 67 deg. 18′ 57″ east, 178.24 feet), a distance of 180.46 feet; thence north 82 deg. 53′ 58″ east, a distance of 172.13 feet; thence along the arc of a 219.11 foot radius curve to the left (the long chord of which bears north 55 deg. 39′ 57″ east, 200.54 feet), a distance of 208.29 feet; thence north 28 deg. 25′ 55″ east, a distance of 294.37 feet; thence along the arc of a 271.56 foot radius curve to the left (the long chord of which bears north 14 deg. 07′ 01″ east, 134.29 feet), a distance of 136.70 feet; thence north 00 deg. 11′ 53″ west, a distance of 71.49 feet; thence along the arc of a 220.99 foot radius curve to the right (the short chord of which bears north 14 deg. 41′ 58″ east, 113.63 feet), a distance of 114.92 feet to the most easterly corner of a tract of land as described in Microfilm Book 330, page 0078, Lincoln County Film Records; thence north 59 deg. 23′ 47″ west, along the Northerly boundary of the above described tract to the High Water Line of the east bank of the Siletz River, a distance of 329 feet, more or less; thence southwesterly, along said High Water Line to its intersection with the westerly line of U.S. Lot 17, Section 4; thence south 00 deg. 43′ 00″ west, along said westerly line to the southwest corner of U.S. Lot 17, which is the point of beginning, a distance of 144, more or less. Containing 9.2 acres more or less.

Tract 4

Parcel III A tract of land located in Section 9, Township 10 south, Range 10 west of the Willamette Meridian, Lincoln County, Oregon, described as follows:

Beginning at the northwest corner of Government Lot 15, in Section 9, Township 10 south, Range 10 west, Willamette Meridian, Lincoln County, Oregon; running thence north 0 deg. 01′ west, a distance of 332.8 feet to the true point of beginning of the tract herein described; thence north 89 deg. 59′ east, a distance of 200 feet, more or less, to the northwest corner of that tract conveyed to the Confederated Tribes of Siletz Indians by Memorandum of Contract recorded December 15, 1987 in Book 188, page 1134; thence south 0 deg. 01′ east 170 feet, more or less, to the northeast corner of the Neil Bordon Tract as described in Bargain and Sale Deed recorded May 22, 1989 in Book 204, page 1443; thence south 89 deg. 59′ west 200 feet, more or less, to the northwest corner of the Neil Bordon Tract as described by Warranty Deed recorded April 18, 1978 in Book 86, page 1091; thence north 0 deg. 01′ west 170 feet, more or less, to the point of beginning. Containing 0.75 acres more or less.

The above-described tracts contain a total of 10.70 acres, more or less, which are subject to all valid rights, reservations, rights-of-way, and easements of record.

This proclamation does not affect title to the land described above, nor does it affect any valid existing easements for public roads and highways, public utilities and for railroads and pipelines and any other rights-of-way or reservations record.

Dated: March 12, 2003.

Aurene M. Martin,

Assistant Secretary—Indian Affairs.

[FR Doc. 03–7637 Filed 3–28–03; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS), Western Gulf of Mexico (GOM), Oil and Gas Lease Sale 187

AGENCY: Minerals Management Service, Interior.

ACTION: Availability of the proposed notice of sale.

SUMMARY: GOM OCS; notice of availability of the proposed notice of sale for proposed Oil and Gas Lease Sale 187 in the Western GOM. This Notice is published pursuant to 30 CFR 256.29(c) as a matter of information to the public.

With regard to oil and gas leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, provides the affected States the opportunity to review the proposed Notice. The proposed Notice sets forth the proposed terms and conditions of the sale, including minimum bids, royalty rates, and rentals.

FOR FURTHER INFORMATION CONTACT: The proposed Notice of Sale for Sale 187 and a ''Proposed Sale Notice Package'' containing information essential to potential bidders may be obtained from the Public Information Unit, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Telephone: (504) 736–2519.

DATES: The final Notice of Sale will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is currently scheduled for August 20, 2003.

Dated: March 19, 2003.

R.M. ''Johnnie'' Burton,

Director, Minerals Management Service.

[FR Doc. 03–7618 Filed 3–28–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0035 and 1029–0063

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection requests for the titles described below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection requests describe the nature of the information collections and their expected burden and cost.

DATES: Comments must be submitted on or before April 30, 2003, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of either information collection request, explanatory information and related form, contact John A. Trelease at (202) 208–2783. You may also contact Mr. Trelease at *jtrelease@osmre.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13),

require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted two requests to OMB to renew its approval for the collections of information found at 30 CFR part 779, Surface mining permit applications—minimum requirements for environmental resources; and for the Coal Production and Reclamation Fee Report—Form OSM–1. OSM is requesting a 3-year term of approval for these information collection activities.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for these collections of information are 1029–0035 for Part 779 and 1029–0063 for the OSM–1 form.

As required under 5 CFR 1320.8(d), a Federal Register notice soliciting comments on these collections of information was published on January 17, 2003 (68 FR 2574). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activities:

Title: Surface mining permit applications—minimum requirements for environmental resources, 30 CFR Part 779.

OMB Control Number: 1029–0035.

Summary: Applicants for surface coal mining permits are required to provide adequate descriptions of the environmental resources that may be affected by proposed surface mining activities. The information will be used by the regulatory authority to determine if the applicant can comply with environmental protection performance standards.

Bureau Form Number: None.

Frequency of Collection: Once upon submittal of mining application.

Description of Respondents: Coal mining companies and state regulatory authorities.

Total Annual Responses: 325.

Total Annual Burden Hours: 52,813 hours.

Title: Abandoned Mine Reclamation Fund—Fee Collection and Coal Production Reporting, 30 CFR Part 870.

OMB Control Number: 1029–0063.

Summary: The information is used to maintain a record of coal produced for sale, transfer, or use nationwide each calendar quarter, the method of coal removal and the type of coal, and the basis for coal tonnage reporting in compliance with 30 CFR 870 and sections 401 and 402 of Public Law 95–87. Individual reclamation fee payment liability is based on this information. Without the collection of information OSM could not implement its regulatory responsibilities and collect the fee. This submission is mandatory. Estimated time to complete the OSM–1 form is 16 minutes for paper copy and 5 minutes using electronic means.

Bureau Form Number: OSM–1.

Frequency of Collection: Quarterly.

Description of Respondents: Coal mine permittees.

Total Annual Responses: 12,364.

Total Annual Burden Hours: 2,605.

Send comments on the need for the collection of information for the performances of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following address. Please refer to the appropriate OMB control number in all correspondence.

ADDRESSES: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW., Washington, DC 20503, and to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 210–SIB, Washington, DC 20240.

Dated: March 20, 2003.

Richard G. Bryson,

Acting Assistant Director, Program Support.

[FR Doc. 03–7562 Filed 3–28–03; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Rehabilitation Maintenance Certificate (OWCP–17). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before May 30, 2003.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW, Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, E-mail *hbell@fenix2.dol-esa.gov.* Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation Programs (OWCP) administers the Longshore and Harbor Workers' Compensation Act and the Federal Employees' Compensation Act. These Acts provide employment rehabilitation benefits to eligible injured workers. The OWCP–17 is a certificate which serves as a bill. It will be submitted, signed, and dated by an injured worker receiving rehabilitation services to request reimbursement from OWCP for expenses incurred as a result of participation in an approved rehabilitation effort. The form requires the signature of a facility official to verify that the employee is in attendance at the program. This information collection is currently approved for use through September 30, 2003.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks approval for the extension of this information collection in order to carry out its responsibility to provide vocational rehabilitation services to injured workers currently unemployed as a result of their injury, to enhance their employment potential.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Rehabilitation Maintenance Certificate.

OMB Number: 1215–0161.

Agency Number: OWCP–17.

Affected Public: Individual or households; Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Total Respondents: 1,300.

Total Responses: 15,600.

Time per Response: 10 minutes.

Frequency: Monthly.

Estimated Total Burden Hours: 2,605.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 25, 2003.

Bruce Bohanon,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 03–7602 Filed 3–28–03; 8:45 am]

BILLING CODE 4510–CK–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0070(2003)]

Standard on Reports of Injuries to Employees Operating Mechanical Power Presses (29 CFR 1910.217(g)); Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comment.

SUMMARY: OSHA requests comment concerning its proposed extension of the information-collection requirements specified by its Standard on Reports of Injuries to Employees Operating Mechanical Power Presses (29 CFR 1910.217(g)). In the event an employee is injured while operating a mechanical power press, 29 CFR 1910.217(g) requires the employer to provide information to OSHA regarding the accident within 30 days of the accident. This information includes the employer's and employee's names, workplace address, injury sustained, task being performed when the injury occurred, number of operators involved, cause of the accident, type of clutch, safeguard(s), and feeding method(s) used, and means used to actuate the press. OSHA's Office of Engineering Safety collects and reviews this information.

DATES: Comments must be submitted by the following dates:

Hard Copy: Your comments must be submitted (postmarked or received) by May 30, 2003.

Facsimile and electronic transmission: Your comments must be received by May 30, 2003.

ADDRESSES:

I. Submission of Comments

Regular mail, express delivery, hand-delivery, and messenger service: Submit your comments and attachments to the OSHA Docket Office, Docket No. ICR 1218–0070(2003), Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., EST.

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You must include the docket number, ICR 1218–0070(2003), in your comments.

Electronic: You may submit comments, but not attachments, through the Internet at *http://ecomments.osha.gov/.*

You may submit comments in response to this document by (1) hard copy, (2) FAX transmission (facsimile), or (3) electronically through the OSHA webpage. Please note you cannot attach materials such as studies or journal articles to electronic comments. If you have additional material, you must submit three copies of them to the OSHA Docket Office at the address above. The additional materials must clearly identify your electronic comments by name, date, subject and docket number so we can attach them to your comments. Because of security-related problems there may be a significant delay in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 for information about security procedures concerning the delivery of materials by express delivery, hand delivery and messenger service.

II. Obtaining Copies of the Supporting Statement for the Information Collection Request

The Supporting Statement for the Information Collection Request is available for downloading from OSHA's Web site at *http://www.osha.gov.* The supporting statement is available for inspection and copying in the OSHA Docket Office, at the address listed above. A printed copy of the supporting statement can be obtained by contacting Theda Kenney at (202) 693–2222.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information-collection burden is correct. The Occupational Safety and Health Act of 1970 (the Act) authorizes information

collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illness, and accidents (29 U.S.C. 657).

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA proposes to extend the Office of Management and Budget's (OMB) approval of the collection-of-information requirements specified by the Standard on Reports of Injuries to Employees Operating Mechanical Power Presses (29 CFR 1910.217(g)). In the past, OSHA has used these reports as a source of up-to-date information on power press machines. Particularly, this information was used to identify the equipment used and conditions association with these injuries. As the number of reports have declined, and other sources of information have become available, OSHA is determining if these reports have any practical utility. Commenters are encouraged to provide any recommendations on how OSHA may utilize these reports now, or in the future. The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of these information-collection requirements.

Type of Review: Extension of a currently approved information-collection requirement.

Title: Reports of Injuries to Employees Operating Mechanical Power Presses (29 CFR 1910.217(g)).

OMB Number: 1218–0070.

Affected Public: Business or other for-profit; not-for-profits institutions; Federal government; State, local, or tribal Government.

Number of Respondents: 75.

Frequency of Recordkeeping: On occasion.

Average Time per Response: 20 minutes (.33 hour).

Total Annual Hours Requested: 25.

IV. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, on March 25, 2003.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 03–7682 Filed 3–28–03; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–034)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that A+FlowTek Corporation, of Kingwood, Texas, has applied for an exclusive license to practice the invention disclosed in NASA Case No. MFS–31952–1 entitled ''Balance Flow Meter.'' Written objections to the prospective grant of a license should be sent to James J. McGroary, Patent Counsel, Mail Stop LS01, Marshall Space Flight Center, Huntsville, AL 35812. NASA has not yet made a determination to grant the requested license and may deny the requested license even if no objections are submitted within the comment period.

DATE: Responses to this notice must be received by April 15, 2003.

FOR FURTHER INFORMATION CONTACT: Sammy A. Nabors, Technology Transfer Department/CD30, Marshall Space Flight Center, Huntsville, AL 35812, telephone (256) 544–5226.

Dated: March 21, 2003.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 03–7541 Filed 3–28–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL MEDIATION BOARD

Submission for OMB Review; Comment Request

AGENCY: National Mediation Board (NMB).

ACTION: Notice.

SUMMARY: The Chief Information Officer, Finance and Administration Department, invites comments on the submission for OMB review, in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995, and 5 CFR 1320). This notice announces that the NMB has submitted to the Office of Management and Budget a request for clearance of six (6) information collections.

DATES: Interested persons are invited to submit comments within 30 days from the date of this publication.

ADDRESSES: Written comments should be addressed to June D. W. King, Chief Information Officer, Finance and Administration, National Mediation Board, 1301 K Street, NW., Suite 250 East, Washington, DC, 20572 or should be e-mailed to *king@nmb.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Chief Information Officer, Finance and Administration Department, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection contains the following: (1) Type of review requested, *e.g.* new, revision extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: March 25, 2003.

June D. W. King,

Chief Information Officer, Finance and Administration Department, National Mediation Board.

Request for Arbitration Panel for Airline System Boards of Adjustment

Frequency: On occasion.

Affected Public: Airline carrier and union officials.

Reporting and Recordkeeping Hour Burden:

Responses: Estimate about 80 annually.

Burden Hours: 20.

Abstract: Section 183 of the Railway Labor Act, 45 U.S.C. 183, provides that the parties to the labor-management disputes in the airline industry must have a procedure for the resolution of disputes involving the interpretation or application of provisions of the collective bargaining agreement. The Railway Labor Act mentions system board of adjustment or arbitration boards as the mechanism for resolution and is silent as to how the neutral arbitrator is to be selected if the parties are unable to agree on an individual. The National Mediation Board provides panels of arbitrators to help the parties in their selection of an arbitrator.

This form is necessary to assist the parties in this process. The parties invoke the process through the submission of this form. The brief information is necessary for the NMB to perform this important function.

Arbitration Services—Personal Data Sheet

Frequency: On occasion.

Affected Public: Arbitrators.

Reporting and Recordkeeping Hour Burden:

Responses: 25 annually.

Burden Hours: 25.

Abstract: Sections 183 and 153 of the Railway Labor Act, 45 U.S.C. 153 and 183, provide for the use of arbitrators in the resolution of disputes concerning the application or interpretation of provisions of a collective bargaining agreement in the airline and railroad industries. The NMB maintains a roster of arbitrators for this purpose. The NMB must have a means for interested individuals to apply for inclusion on this roster. This form is the application for inclusion on the NMB roster. The brief information that the NMB solicits is necessary to perform this responsibility under the Railway Labor Act.

Request for Public Law Board Member

Frequency: On occasion.

Affected Public: Carrier and union officials of railroads.

Reporting and Recordkeeping Hour Burden:

Responses: Estimate 15 annually.

Burden Hours: 3.75.

Abstract: Section 153, Second, of the Railway Labor Act, 45 U.S.C. 153, Second, governs procedures to be followed by carriers and representatives of employees in the establishment and functioning of special adjustment boards. These special adjustment boards are referred to as public law boards (board). The statute provides that within thirty (30) days from the date a written request is made by an employee representative or carrier official for the establishment of a board, an agreement establishing such board shall be made. If, however, one party fails to designate a member of the board, the party making the request may ask the NMB to designate a member on behalf of the other party. The NMB must designate the representative who, together with the other party constitute the public board. It will be the task of these two individuals to decide on the terms of the agreement. If these individuals are unable to decide upon the terms, the Railway Labor Act provides that one of these parties may request that the NMB designate a neutral to resolve the remaining matters which are procedural issues. Pursuant to 29 CFR 1207.2, requests for the NMB to appoint either representatives or neutrals must be made on printed forms which may be secured from the NMB.

This form is necessary for the NMB to fulfill its statutory responsibilities. Without this information, the NMB would not be able to assist the railroad labor and management representatives in resolving disputes, which is contrary to the intent of the Railway Labor Act.

Arbitration Services—Official Travel/ Referee Compensation Authorization

Frequency: On occasion.

Affected Public: Arbitrators.

Reporting and Recordkeeping Hour Burden:

Responses: Approximately 624 annually.

Burden Hours: 156.

Abstract: Section 153, First and Second of the Railway Labor Act, 45 U.S.C. 153, First and Second, provide that the NMB shall compensate arbitrators who resolve the resolves under these sections of the Act. The arbitrator must submit a written request, in advance, for authorization to be compensated for work to be performed. The arbitrator must obtain authorization before performing work. This form is the request and is necessary for the NMB to fulfill its financial responsibilities.

Arbitration Services—Pay Voucher for Personal Services

Frequency: On occasion.

Affected Public: Arbitrators.

Reporting and Recordkeeping Hour Burden:

Responses: Approximately 624 annually.

Burden Hours: 156.

Abstract: Section 153, First and Second of the Railway Labor Act, 45 U.S.C. 153, First and Second, provide that the NMB shall compensate arbitrators who resolve the resolves under these sections of the Act. After the work is performed, the arbitrator must submit a written request for compensation. This form is the vehicle used to request compensation and is necessary for the NMB to fulfill its financial responsibilities.

Neutral's Report of Activity

Frequency: On occasion.

Affected Public: Arbitrators.

Reporting and Recordkeeping Hour Burden:

Responses: Approximately 624 annually.

Burden Hours: 156.

Abstract: Section 153, First and Second of the Railway Labor Act, 45 U.S.C. 153, First and Second, provide that the parties may use an arbitrator to resolve their disputes concerning the application or interpretation of the provisions of a collective bargaining agreement. The NMB must record the decisions rendered by the arbitrators selected by the parties and compensated by the NMB. This form is used to gather that information. This brief information is necessary for the NMB to fulfill its responsibilities under the Railway labor Act.

Requests for copies of the proposed information collection request may be accessed from *www.nmb.gov* or should be addressed to Grace Ann Leach, NMB, 1301 K Street, NW., Suite 250 E, Washington, DC 20572 or addressed to the e-mail address *leach@nmb.gov* or faxed to 202–692–5081. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to June D. W. King at 202–692–5010 or via internet address *king@nmb.gov.* Individuals who use a telecommunications device for the deaf (TDD/TDY) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–7571 Filed 3–28–03; 8:45 am]

BILLING CODE 7550–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–335 and 50–389]

Florida Power and Light Co., et al.; Individual Notice, Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Consideration; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Individual notice; correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on January 28, 2003 (68 FR 4244), that contained an incorrect No Significant Hazards Consideration. This action is necessary to correct the No Significant Hazards Consideration.

FOR FURTHER INFORMATION CONTACT: Brendan T. Moroney, Project Manager, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–3974, e-mail: *btm3@nrc.gov*.

SUPPLEMENTARY INFORMATION: The No Significant Hazards Consideration in the January 28, 2003, individual notice should be replaced in its entirety with the No Significant Hazards Consideration for the same amendment that was included in the Biweekly Notice of Applications and Amendments to Operating Licenses Involving No Significant Hazards Consideration published on December 10, 2002 (67 FR 75881).

Dated in Rockville, Maryland, this 25th day of March, 2003.

For the Nuclear Regulatory Commission.

Brendan T. Moroney,

Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–7628 Filed 3–28–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–286]

Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from certain requirements of Title 10 of the Code of Federal Regulations (CFR) section 50.44, ''Standards for combustible gas control system in light-water-cooled power reactors,'' for Facility Operating License No. DPR–64, issued to Entergy Nuclear Operations, Inc. (ENO or licensee), for operation of the Indian Point Nuclear Generating Unit No. 3 (IP3) located in Westchester County, Buchanan, New York. The exemption would permit removal of the backup post accident containment ventilation (PACV) system for IP3. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

Section 50.44 of 10 CFR sets out requirements for the control of the hydrogen generated after a postulated loss-of-coolant accident (LOCA). The hydrogen control system at IP3 includes the PACV system. The proposed action would allow the licensee to remove the PACV system from the IP3 licensing basis. A planned retirement of the PACV system would occur during Refueling Outage 12, in the spring of 2003. The proposed action is in accordance with ENO's request for an exemption, dated October 3, 2002, as supplemented on January 16 and March 11, 2003.

The Need for the Proposed Action

The proposed exemption from the requirements pertaining to the hydrogen purge system and the associated removal from the licensing basis, would simplify the Severe Accident Management Guidelines and prevent the need to restore or maintain the PACV system with its accompanying cost and exposure. The capping of the piping for the PACV system containment penetrations also eliminates the need to verify the containment isolation valves in this system are operable.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes, as set forth below, that there are no significant environmental impacts associated with the removal of the PACV system from the IP3 licensing basis.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types or quantities of effluents that may be released off-site, and there is no significant increase in occupational or public radiation exposure since there is no change to facility operations that could create a new or affect a previously analyzed accident or release path. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the ''no-action'' alternative). Denial of the application would result in no changes in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for IP3, dated February 1975.

Agencies and Persons Consulted

On March 14, 2003, the staff consulted with the New York State official, Mr. John Spath of the New York State Energy Research and Development Authority, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated October 3, 2002, as supplemented by letters dated January 16 and March 11, 2003. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/*

reading-rm/adams.html. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 25th day of March, 2003.

For the Nuclear Regulatory Commission.

Richard J. Laufer,

Chief, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–7629 Filed 3–28–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA–2117; File No. 4–476]

Roundtable Discussions Relating to Hedge Funds

AGENCY: Securities and Exchange Commission.

ACTION: Notice of roundtable discussions; request for comment.

SUMMARY: On May 14 and 15, 2003, the Securities and Exchange Commission will host roundtable discussions concerning several issues relating to private, unregistered investment pools, commonly known as hedge funds. The roundtable discussions will bring together representatives from the hedge fund industry and other interested persons to discuss issues relating to hedge funds and offer their recommendations. The roundtable discussions will take place at the Commissions' headquarters at 450 Fifth Street, NW., Washington, DC from 9 a.m. to 5:30 p.m. each day. The public is invited to observe the roundtable discussions. Seating is available on a first-come, first-serve basis.

DATES: Comments must be received on or before April 30, 2003.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by one method only. Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following E-mail address: *hedgefunds@sec.gov.* All comment letters should refer to File No. 4–476; this File number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Relevant electronically submitted comment letters also will be posted on the Commission's Internet Web site: *http://www.sec.gov/spotlight/hedgefunds.htm.*

FOR FURTHER INFORMATION CONTACT: Cynthia M. Fornelli, Deputy Director, Division of Investment Management, (202) 942–0720, or Elizabeth G. Osterman, Assistant Chief Counsel, Division of Investment Management, (202) 942–0580, *Ostermane@sec.gov,* at Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The public may submit written comments on the following topics to be discussed at the Roundtable Discussions Relating to Hedge Funds:

The structure, operation and compliance activities of hedge funds, including the role of hedge fund service providers;

The marketing of hedge funds;

Investor protection concerns, including disclosure issues, valuation issues and potential conflicts of interest;

Current regulation of hedge funds and their managers, and whether additional regulation is necessary; and

If additional regulation is warranted, what form it might take.

By the Commission.

Dated: March 26, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–7615 Filed 3–28–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47570; File No. S7–26–98]

RIN 3235–AH04

Books and Records Requirements for Brokers and Dealers Under the Securities Exchange Act of 1934

AGENCY: Securities and Exchange Commission.

ACTION: Notice of OMB approval of collections of information.

SUMMARY: The Securities and Exchange Commission adopted amendments to Rules 17a–3 and 17a–4 (17 CFR 240.17a–3 and 240.17a–4) under the Securities Exchange Act of 1934 (17 U.S.C. 78, *et seq.*) on October 26, 2001. The amendments clarify and expand recordkeeping requirements with respect to purchase and sale documents, customer records, associated person records, customer complaints, and certain other matters, and require broker-dealers to maintain or promptly produce certain records at each office to which those records relate. Certain provisions of these amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and the Commission submitted the proposed collections of information to the Office of Management and Budget (''OMB'') for review. OMB has approved the collection of information requirements contained in the amendments to the Books and Records Rules.

DATES: The effective date of the amendments to Exchange Act Rules 17a–3 and 17a–4 is May 2, 2003.

FOR FURTHER INFORMATION CONTACT: Bonnie L. Gauch, Attorney, at (202) 942–0765, in the Division of Market Regulation, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION:

I. Amendments to Rules 17a–3 and 17a–4

Rules 17a–3 and 17a–4[1] under the Securities Exchange Act of 1934[2] (the ''Exchange Act'')(hereinafter the ''Books and Records Rules''), specify minimum requirements with respect to the records that broker-dealers must make, and how long those records and other documents relating to a broker-dealer's business must be kept. The Securities and Exchange Commission (the ''Commission'') amended the Books and Records Rules on October 26, 2001.[3] The amendments to Rule 17a–3 included revisions to the information that must be recorded on order tickets, and new requirements to: create certain records relating to associated persons; collect certain account record information and verify that information with customers periodically; create a record of customer complaints; create a record indicating compliance with applicable advertising rules; and create records identifying persons responsible for establishing procedures and persons able to explain the broker-dealer's records to a regulator. The amendments to Rule 17a–4 require that a broker-dealer: maintain a record of advertisements and other ''communications with the public;'' clarify the definitions of organizational documents; and set recordkeeping requirements for new records required to be created pursuant to the

[1] 17 CFR 240.17a–3 and 240.17a–4.

[2] 17 U.S.C. 78, *et al.*

[3] Securities Exchange Act Release No. 44992, 66 FR 55818 (Nov. 2, 2001) (the ''Adopting Release'').

amendments to 17a–3, certain exception reports and special regulatory reports, and written compliance, supervisory and procedure manuals. Finally, the amendments to Rules 17a–3 and 17a–4 also set forth, (i) the definition of ''office,'' (ii) what records must be created as to each office, and (iii) what records must be maintained at each office.

II. Collection of Information Requirements

As explained in the Adopting Release, certain provisions of the amendments to the Books and Records Rules contain ''collection of information'' requirements[4] within the meaning of the Paperwork Reduction Act of 1995.[5] In the Adopting Release, the Commission estimated the burden hours for these collection of information requirements and solicited comments on the collection of information requirements and the burden estimate. The Commission submitted the proposed collection of information requirements to OMB for review as required pursuant to 44 U.S.C. 3507 and 5 CFR 1320.11. The titles for the collections of information are: (1) ''Rule 17a–3; Records to be Made by Certain Exchange Members, Brokers and Dealers;'' and (2) ''Rule 17a–4; Records to be Preserved by Certain Exchange Members, Brokers and Dealers.'' The Commission did not receive any comments on the collection of information requirements of the amendments to the Books and Records Rules.

The purpose of requiring that broker-dealers create and maintain the records specified in the amendments to the Books and Records Rules is to enhance the ability of regulators to protect investors. These records and the information contained therein will be used by examiners and other representatives of the Commission, State[6] securities regulatory authorities, and the self-regulatory organizations (''SROs'') to determine whether broker-dealers are in compliance with the Commission's antifraud and anti-manipulation rules, financial responsibility program, and other Commission, SRO, and State laws, rules, and regulations.

A. Respondents

As of the end of 2000, broker-dealers reported that they maintained a total of approximately 97,600,000 customer accounts. The Commission estimates that the total number of accounts that would need to be contacted for updating is approximately 70,500,000. Approximately 70 of the 7,217 active, registered broker-dealers[7] maintain over 100,000 accounts, and the remaining broker-dealers (7,147) maintain less than 100,000 accounts each. Of the approximately 70,500,000 accounts that may be affected by these Adopted Amendments to Rule 17a–3, approximately 68,385,000 (or 97%) are maintained at these large broker-dealers, and 2,115,000 (or 3%) are maintained at broker-dealers with fewer than 100,000 accounts each.

B. Total Annual Reporting and Recordkeeping Burden of Amendments to Rule 17a–3

New paragraph (a)(17) of Rule 17a–3 requires that broker-dealers collect certain account information for each account, and send account information to customers for verification within 30 days of account opening and at least every 36 months thereafter. This new paragraph is designed to: (1) Assure that broker-dealers have customer account information to provide to regulators which enable the regulators to review for compliance with suitability rules, and (2) reduce the number of misunderstandings between customers and broker-dealers regarding the customer's situation or investment objectives. The Commission estimates that the total annual burden of new paragraph (a)(17) of Rule 17a–3 will be 1,283,786 hours.[8]

Amendments to paragraph (a)(12) and new paragraph (a)(19) of Rule 17a–3 require broker-dealers to keep certain records regarding their associated persons. These amendments will allow securities regulators to identify where associated persons work, read various records which may identify the associated persons solely through the use of identification numbers, and quickly identify compensation trends and focus examinations. The Commission estimates that, on average, these amendments would require each broker-dealer to spend approximately 30 minutes each year to ensure that it is in compliance with these amendments to Rule 17a–3, which would result in a total annual compliance burden of about 3,609 hours.[9]

The amendments to Rule 17a–3 also require broker-dealers to make records: That indicate that they have either complied with or adopted procedures designed to establish compliance with applicable regulations of certain securities regulatory authorities,[10] that list persons who can explain the information in the broker-dealer's records,[11] and that list principals responsible for establishing compliance policies and procedures.[12] These

[4] 66 FR 55818, at 55834 through 55837 (Nov. 2, 2001).

[5] 44 U.S.C. 3501 *et seq.*

[6] 15 U.S.C. 78c(a)(16).

[7] Of approximately 7,739 broker-dealers registered with the Commission, approximately 341 are not yet active because their registration is pending SRO approval and approximately 181 are inactive because they have ceased doing a securities business and have filed a Form BDW with the Commission. Of these 7,217 active, registered broker-dealers, three are registered OTC Derivatives Dealers. OTC Derivatives Dealers are a special class of broker-dealers that limit their business to dealer activities in eligible over-the-counter derivative instruments and that meet certain financial responsibility and other requirements.

[8] The Commission estimates that, as their processes are more automated, it will take large broker-dealers an average of 1½ additional minutes per account every three years, thus requiring large broker-dealers to spend an additional 569,875 hours per year (68,385,000 account records /3 years × 1.5 minutes /60 minutes) to send account information to customers. As small broker-dealers utilize processes that are more manual in nature, the Commission estimates that it will take small broker-dealers an average of 7 minutes per account every three years, thus requiring small broker-dealers to spend an additional 82,250 hours per year (2,115,000 account records /3 years × 7 minutes /60 minutes) to send account records to customers. Thus, the total additional burden on the industry to send account records to customers is approximately 652,125 hours per year.

The Commission estimates that approximately 20% of the customers from whom information is requested will update their account records, resulting in 4,700,000 updated account records each year (70,500,000 /3 years × 20%). Thus, the Commission estimates that it would take, on average, 5 minutes for large broker-dealers to update each account and 10 minutes for small broker-dealers to update each account, resulting in an additional burden of approximately 403,417 hours per year ((4,559,000 account records × 5 minutes /60 minutes) + (141,000 account records × 10 minutes /60 minutes)).

If a customer has provided the broker-dealer with updated account record information, under Paragraphs (a)(17)(B)(*2*) and (*3*) of Rule 17a–3 the broker-dealer must send a copy of the revised account record to the customer within 30 days after the broker-dealer received notification of the change or, under (a)(17)(B)(*3*), the broker-dealer may send the notification with the next statement mailed to the customer. The Commission estimates that, in addition to the 70,500,000 updated account records discussed above, approximately 3,525,000 customers (5% of the 70,500,000 accounts for which firms will be required to make the account record) will initiate changes to their account records on a yearly basis, just as they do now, with no prompting from any account record mailing. The Commission estimates, as stated above, that it will take large broker-dealers 1½ minutes and smaller broker-dealers 7 minutes to send out account information to each customer who updated their account. The Commission estimates that 8,225,000 (4,700,000 + 3,525,000) customers will update their account record, and that broker-dealers will spend an additional 228,244 hours each year ((7,978,250 account records × 1.5 minutes /60 minutes) + (246,750 account records × 7 minutes /60 minutes)) sending the updated account records to customers.

[9] (7,217 broker-dealers × 30 minutes) /60 minutes.

[10] 17 CFR 240.17a–3(a)(17)(iii) and 17 CFR 240.17a–3(a)(20).

[11] 17 CFR 240.17a–3(a)(21).

[12] 17 CFR 240.17a–3(a)(22).

requirements are designed to assist securities regulators in conducting efficient examinations. The Commission estimates, therefore, that on average each broker-dealer would spend 10 minutes each year to ensure compliance with these requirements, yielding a total additional burden of about 1,203 hours.[13]

Thus, the Commission estimates that the total annual burden of the amendments to Rule 17a–3 will be 1,288,598 hours. The Commission further estimates that broker-dealers would incur a one-time burden to update certain forms, to include additional information on the new account form and provide customers with an address as to where they should direct complaints, of 28,856 hours.[14] Finally, based on comments received in response to the reproposing release,[15] the Commission estimates that broker-dealers will incur $21.2 million in start-up costs for systems and equipment development, and up to $24.8 million in annual costs for postage and systems development in order to comply with the amendments to Rule 17a–3. On January 30, 2002, OMB approved the collections of information contained in the amendments to rule 17a–3.

C. Total Annual Reporting and Recordkeeping Burden of Amendments to Rule 17a–4

The amendments to Rule 17a–4 require that certain information be kept for prescribed periods of time. The Commission estimates that compliance with the amendments for Rule 17a–4 would require an additional 28,868 hours each year.[16] On April 18, 2002, OMB approved the collections of information contained in the amendments to Rule 17a–4.

III. Additional Information

The amendments to Rules 17a–3 and 17a–4 (OMB Control Nos. 3235–0033 and 3235–0279, respectively) were adopted pursuant to the authority conferred on the Commission by the Exchange Act, including sections 17(a) and 23(a). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. We are providing this notice to inform the public that the Commission has received OMB approval and OMB has issued a control number for this collection.

It is mandatory for all brokers and dealers to create records as required pursuant to Rules 17a–3 and to retain those and other specified records as set forth in Rule 17a–4.

The records required by the amendments to the Books and Records Rules are not filed with the Commission, but are available to the examination staffs of the Commission, State regulatory authorities, and the SROs. Subject to the provisions of the Freedom of Information Act, 5 U.S.C. 552 (''FOIA'') and the Commission's rules thereunder (17 CFR 200.80(b)(4)(iii)), the Commission generally does not publish or make available information contained in reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an examination or inspection of the books and records of any person or any other investigation.

Dated: March 26, 2003.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–7617 Filed 3–28–03; 8:45 am]

BILLING CODE 8010–01–P

[13] (7,217 broker-dealers × 10 minutes) /60 minutes.

[14] 7,217 total active registered broker-dealers × 4 hours each. This includes the time it would take for a broker-dealer to draft the additional language and incorporate it into its present forms.

[15] Exchange Act Release No. 40518 (Oct. 2, 1998), 63 FR 54404 (Oct. 9, 1998).

[16] The Commission estimates that, on average, each broker-dealer (7,217) would spend four hours each year to ensure that it is in compliance with the amendments to Rule 17a–4 and to produce required records promptly at an office when so required.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47566; File No. SR–NASD–2003–41]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Disseminate Up to Thirty Additional Corporate Bonds Under the Trade Reporting and Compliance Engine (''TRACE'') Rules

March 25, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 18, 2003, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. NASD has designated the proposed rule change as constituting a ''non-controversial'' rule change pursuant to section 19(b)(3)(A)(iii) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend Rule 6250(a)(4) to increase the number of TRACE-eligible securities to be disseminated under the rule from 90 securities to up to 120 securities. Below is the text of the proposed rule change. Proposed new language is in *italics;* proposed deletions are in brackets.

* * * * *

6250. Dissemination of Corporate Bond Trade Information

(a) General Dissemination Standard

Immediately upon receipt of transaction reports received at or after 8:00 a.m. through 6:29:59 p.m. Eastern Time, NASD will disseminate transaction information (except that market aggregate information and last sale information will not be updated after 5:15 p.m. Eastern Time) in the securities described below.

(1) No Change.

(2) No Change.

(3) No Change.

(4) Ninety *to 120* TRACE-eligible securities designated by NASD that are rated *''*Baa/BBB*''* at the time of designation, according to the following standards.

(A) Three groups, *each* composed of *up to 50* [30] TRACE-eligible securities (Group 1, Group 2, and Group 3), *but collectively not exceeding 120* shall be designated by NASD. At the time of designation, each TRACE-eligible security in Group 1 must be rated ''Baa1/BBB+[;]'' and each TRACE-eligible security in Group 2 and Group 3 must be rated, respectively, ''Baa2/BBB − [,]'' and ''Baa3/BBB − .[,]'' [provided that if] *If* a TRACE-eligible security is rated one of the ''Baa'' ratings by Moody's and one of the ''BBB'' ratings by S&P and the ratings indicate two different levels of credit quality, the lower of the two ratings will be used to determine the group to which a debt

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] NASD asked the Commission to waive the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

security will be assigned under this paragraph (a)(4).

(B) No Change.

(C) No Change.

(b) through (d) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Rule 6250(a)(4) to increase the number of TRACE-eligible securities rated ''Baa/BBB'' [6] that will be subject to dissemination from 90 bonds to up to 120 bonds. This minor adjustment in the number of ''Baa/BBB''-rated bonds to be disseminated under the Trade

Reporting and Compliance Engine (''TRACE'') rules is being proposed so that NASD may continue to increase transparency as appropriate, while being cognizant of the potential adverse effects, if any, that transparency may have on the liquidity of the corporate bond market.

On July 1, 2002, when TRACE began, transaction information was disseminated in two types of corporate bonds: (1) TRACE-eligible securities having an initial issuance size of $1 billion or greater that are Investment Grade at the time of receipt of the transaction report; and (2) 50 actively traded TRACE-eligible securities that are Non-Investment Grade and meet other criteria set forth in Rule 6250(a)(2). Approximately 540 corporate bonds were disseminated under the two categories.

On December 6, 2002, NASD filed SR–NASD–2002–174, a proposal to increase substantially the dissemination of Investment Grade TRACE-eligible securities. NASD proposed, and obtained approval from the SEC, to increase transparency by requiring dissemination of price and other transaction information in two additional categories of corporate bonds. They are: (1) Any TRACE-eligible security that is Investment Grade, is rated by Moody's as ''A3'' or higher, and by S&P's as ''A−'' or higher, and has an original issue size of $100 million or greater; and (2) ninety TRACE-eligible securities rated ''Baa/BBB'' at the time of designation, with the bonds being identified in three subgroups to represent the ''Baa/BBB'' credit spectrum (*i.e.*, ''Baa1/BBB+,'' ''Baa2/BBB,'' and ''Baa3/BBB−'').[7]

On March 3, 2003, NASD began disseminating the TRACE-eligible securities rated ''A3/A−'' or higher and with original issue size of 100 million or greater, which increased the number of bonds subject to dissemination to over 4,000 corporate bonds.[8] However, NASD withheld the dissemination of ninety bonds rated ''Baa/BBB'' to provide time to assure that the bonds designated for dissemination were appropriately diverse and representative of the ''Baa/BBB''-rated group. During the bond identification process, NASD, based on guidance from independent economists, determined that the database of disseminated transaction data on ''triple-B-rated bonds'' should be increased to include transaction information on up to 120 TRACE-eligible securities to increase transparency in a sufficient number of ''Baa/BBB'' bonds to improve significantly the quality of the data to be collected. The increased transparency will provide a better foundation for determining the effect, if any, of transparency on liquidity.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[9] which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change requiring the dissemination of up to 30 additional ''Baa/BBB''-rated TRACE-eligible securities will protect investors and the public interest by increasing transparency in the debt securities markets and serving as an appropriately designed database to aid NASD in determining if transparency has an adverse effect on the liquidity of the bond market.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on this proposed rule change were neither solicited nor received. However, written comments were solicited concerning the dissemination of a representative group of bonds rated ''Baa/BBB'' with the publication for notice and comment of SR–NASD–2002–174, and two comment letters were received. NASD represents that these two comment letters generally favored the NASD's proposed rule change.[10] After considering the comments, the SEC approved SR–NASD–2002–174 on January 31, 2003.[11] NASD represents that its proposal in this rule filing is a minor, non-controversial proposed change to the provision in Rule 6250(a)(4) providing for the dissemination of TRACE-eligible securities rated ''Baa/BBB.''

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public

[6] Moody's Investors Service, Inc. (''Moody's'') is a nationally recognized statistical rating organization. Moody's is a registered trademark of Moody's Investors Service. Moody's ratings are proprietary to Moody's and are protected by copyright and other intellectual property laws. Moody's licenses ratings to NASD. Ratings may not be copied or otherwise reproduced, repackaged, further transmitted, transferred, disseminated, redistributed or resold, or stored for subsequent use for any purpose, in whole or in part, in any form or manner or by any means whatsoever, by any person without Moody's prior written consent.

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[7] Securities Exchange Act Release No. 47302 (January 31, 2003), 68 FR 6233 (February 6, 2003) (order approving SR–NASD–2002–174).

[8] *See* NASD Notice to Members 03–12 (February 2003).

[9] 15 U.S.C. 78o–3(b)(6).

[10] Securities Exchange Act Release No. 47057 (December 19, 2002), 67 FR 79210 (December 27, 2002) (notice of filing of and request for comment on SR–NASD–2002–174).

[11] *See* note 7, *supra.*

interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest) from the date on which it was filed, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. NASD has requested that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii),[14] because (1) the public interest is furthered and the protection of investors is enhanced by increasing transparency in the ''Baa/BBB''-rated segment of the corporate bond market; (2) NASD briefly deferred the dissemination of ''Baa/BBB''-rated TRACE-eligible securities in order to designate a representative group of such securities; and (3) for the convenience of investors, broker-dealers, other market participants, and NASD, NASD will initiate the dissemination of all the ''Baa/BBB''-rated corporate bonds approved for dissemination on the same date, which will occur as soon as possible after the filing of this rule filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will permit NASD to expand dissemination of ''Baa/BBB''-rated corporate bonds immediately. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[16]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of NASD. All submissions should refer to file number SR–NASD–2003–41 and should be submitted by April 21, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–7613 Filed 3–28–03; 8:45 am]

BILLING CODE 8010–01–P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] *See* section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47563; File No. SR–OC–2003–03]

Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of Proposed Rule Change by OneChicago, LLC Relating to Position Limits

March 24, 2003.

Pursuant to section 19(b)(7) of the Securities Exchange Act of 1934 (''Act''),[1] and rule 19b-7 under the Act,[2] notice is hereby given that on February 13, 2003, OneChicago, LLC (''OneChicago'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change described in items I and II below, which items have been prepared by OneChicago. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. OneChicago also has filed the proposed rule change with the Commodity Futures Trading Commission (''CFTC''), together with a written certification under section 5c(c) of the Commodity Exchange Act [3] on February 10, 2003.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

OneChicago proposes to amend OneChicago rules 414(a) and 902(f) relating to position limits to reference CFTC Regulation 41.25.[4] The text for proposed rule change follows.

Proposed new language is *italicized*; proposed deletions are in [brackets].

Position Limits and Price Limits

414. Position Limits

(a) Position limits shall be as established by the Exchange from time to time *as permitted by Commission Regulation § 41.25*. Such position limits may be specific to a particular Contract or delivery month or may be established on an aggregate basis among Contracts or delivery months. Except as specified in paragraph (b) below, no Clearing Member, Exchange Member or Access Person shall control, or trade in, any number of Contracts that exceed any position limits so established by the Exchange. Except as specified in paragraph (b) below, no Clearing Member, Exchange Member or Access Person shall be permitted to enter into any transaction on the Exchange that would cause such Clearing Member, Exchange Member or Access Person to exceed any position limits.

(b)–(g) No Change

* * * * *

902 Contract Specifications

(a)–(e) No Change

(f) Speculative Position Limit. For purposes of rule 414, the position limit applicable to positions in any Single Stock Future held during the last five trading days of an expiring contract month shall be *in accordance with Commission Regulation § 41.25* [13,500 contracts (net), long or short, in such contract month. There shall be no other position limits for Single Stock Futures].

(g)–(i) No Change

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] 7 U.S.C. 7a–2(c).

[4] 17 CFR 41.25.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OneChicago has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in item IV below. These statements are set forth in sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

OneChicago proposes to amend OneChicago rules 414(a) and 902(f) relating to position limits to reference CFTC Regulation 41.25.[5] The proposed rule change would permit OneChicago to set position limits on futures on a single security consistent with CFTC Regulation 41.25.[6]

2. Statutory Basis

OneChicago believes that the proposed rule change is consistent with CFTC Regulation 41.25[7] and with section 6(b)(5) of the Act[8] in that it promotes competition, is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

OneChicago does not believe that the proposed rule change will have an impact on competition because the proposed rule change is referencing a CFTC Regulation, which is applicable to all security futures participants equally.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule change have not been solicited nor have any comments been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective on February 11, 2003. Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of section 19(b)(1) of the Act.[9]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change conflicts with the Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov.* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of these filings also will be available for inspection and copying at the principal office of OneChicago. Electronically submitted comments will be posted on the Commission's Internet website (*http://www.sec.gov*). All submissions should refer to File No. SR–OC–2003–03 and should be submitted by April 21, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–7616 Filed 3–28–03; 8:45 am]

BILLING CODE 8010–01–P

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(1).

[10] 17 CFR 200.30–3(a)(15).

DEPARTMENT OF STATE

[Public Notice 4324]

Culturally Significant Objects Imported for Exhibition Determinations: ''Illuminating the Renaissance: The Triumph of Flemish Manuscript Painting in Europe''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999 (64 FR 56014), and Delegation of Authority No. 236 of October 19, 1999 (64 FR 57920), as amended, I hereby determine that the objects to be included in the exhibition, ''Illuminating the Renaissance: The Triumph of Flemish Manuscript Painting in Europe'' imported from abroad for temporary exhibition within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the J. Paul Getty Museum, Los Angeles, California, from on or about June 17, 2003, to on or about September 7, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: March 24, 2003.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–7652 Filed 3–28–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4267]

Notice of Meeting of the United States International Telecommunication Advisory Committee Radiocommunication Sector (ITAC–R)

The Department of State announces a meeting of the ITAC–R. The purpose of the Committee is to advise the Department on matters related to telecommunication and information policy matters in preparation for international meetings pertaining to telecommunication and information issues.

The ITAC–R will meet to discuss the matters related to the World Radiocommunication Conference that will take place 9 June–4 July 2003 in Geneva, Switzerland. The ITAC–R

meeting will be convened on 4 April 2003 from 2 to 4 p.m. in the Dean Acheson Auditorium at the Department of State. The Department of State is located at 2201 C St., NW., Washington, DC.

Members of the public will be admitted and may join in the discussions subject to the instructions of the Chair. Entrance to the Department of State is controlled. Persons planning to attend the meeting should send the following data by fax to (202) 647–7407 or email to *worsleydm@state.gov* not later than 24 hours before the meeting: (1) Name of the meeting, (2) your name, (3) social security number, (4) date of birth, and (5) organizational affiliation. One of the following current photo identifications must be presented to gain entrance to the Department of State: U.S. driver's license with your photo on it, U.S. passport, or U.S. Government identification. Directions to the Department of State may be obtained by calling the ITAC Secretariat at 202–647–2592 or emailing to *worsleydm@state.gov.*

Dated: March 26, 2003.

Douglas R. Spalt,

International Telecommunications and Information Policy, Department of State.

[FR Doc. 03–7779 Filed 3–28–03; 8:45 am]

BILLING CODE 4710–45–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Exclusion of Particular Products From Actions Under Section 203 of the Trade Act of 1974 With Regard to Certain Steel Products; Conforming Changes and Technical Corrections to the Harmonized Tariff Schedule of the United States

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Pursuant to authority granted to the United States Trade Representative (''USTR'') in Presidential Proclamation 7529 of March 5, 2002 (67 FR 10553), USTR has found that particular products should be excluded from actions under section 203 of the Trade Act of 1974, as amended, (19 U.S.C. 2253) (''Trade Act'') with regard to certain steel products, and is modifying subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTS) as set forth in the annex to this notice to implement these exclusions. In addition, pursuant to authority delegated to USTR in Presidential Proclamation 6969 of January 27, 1997 (62 FR 4415), USTR is making technical corrections to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTS) as set forth in the annex to this notice. These modifications correct several inadvertent errors and omissions in the subheadings 9903.72.30 through 9903.74.24 of the HTS so that the intended tariff treatment is provided.

EFFECTIVE DATE: The modifications and corrections made in this notice are effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the dates set forth in each item in the annex to this notice.

FOR FURTHER INFORMATION CONTACT: Office of Industry, Office of the United States Trade Representative, 600 17th Street, NW., Room 501, Washington, DC 20508. Telephone (202) 395–5656.

SUPPLEMENTARY INFORMATION: On March 5, 2002, pursuant to section 203 of the Trade Act, the President issued Proclamation 7529, which imposed tariffs and a tariff-rate quota on (a) certain flat steel, consisting of: slabs, plate, hot-rolled steel, cold-rolled steel, and coated steel; (b) hot-rolled bar; (c) cold-finished bar; (d) rebar; (e) certain tubular products; (f) carbon and alloy fittings; (g) stainless steel bar; (h) stainless steel rod; (i) tin mill products; and (j) stainless steel wire, as provided for in subheadings 9903.72.30 through 9903.74.24 of the Harmonized Tariff Schedule of the United States (''HTS'') (''safeguard measures'') for a period of three years plus 1 day. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m., EST, on March 20, 2002, Proclamation 7529 modified subchapter III of chapter 99 of the HTS so as to provide for such increased duties and a tariff-rate quota. Proclamation 7529 also delegated to the USTR the authority to consider requests for exclusion of a particular product submitted in accordance with the procedures set out in 66 FR 54321, 54322–54323 (October 26, 2001) and, upon publication in the **Federal Register** of a notice of his finding that a particular product should be excluded, to modify the HTS provisions created by the annex to that proclamation to exclude such particular product from the pertinent safeguard measure. On April 5, 2002, USTR published a notice in the **Federal Register** excluding particular products from the safeguard measures, and modified the HTS accordingly. 67 FR 16484. On July 3, the President issued Proclamation 7576, which extended the period for granting exclusions until August 31, 2002. On July 12, 2002, and August 30, 2002, USTR published notices in the **Federal Register** excluding additional products from the safeguard measures, and modified the HTS accordingly. 67 FR 46221 and 67 FR 56182.

USTR has further considered exclusion requests for certain products designated as A600, A604, A605, A607, A609, A611, A613, A614, A615, A617, A619, A621, A623, A625, A626, A627, A629, A630, A631, A632, A634, A635, A641, A642, A643, A645, A646, A648, A649, A650, A655, A656, A661, A663, A667, A668, A669, A672, A673, A674, A675, A676, A677, A679, A680, A682, A684, A686, A688, A689, A692, A693, A694, A695, A697, A698, A699, A701, A705, A708, A709, A710, A711, A712, A714, A715, A717, A719, A721, A723, A725, A726, A728, A729, A732, A739, A742, A743, A744, A750, A751, A752, A754, A756, A765, A767, A769, A774, A779, A782, A786, A789, A791, A793, A805, A806, A807, A809, and A810. USTR finds that the exclusion from the safeguard measures established in Proclamation 7529 of certain steel products within these designations, as described in the annex to this notice, would not undermine the goals of those safeguard measures. Therefore, I find that these products should be excluded from those safeguard measures. Accordingly, under authority vested in the USTR by Proclamations 7529, I modify the HTS provisions created by the annex to Proclamation 7529 as set forth in the annex to this notice. Such modifications shall be embodied in the HTS with respect to goods entered, or withdrawn from warehouse for consumption, on the dates indicated in the annex to this notice.

On March 19, 2002, June 4, 2002, July 12, 2002, August 30, 2002, November 14, 2002, and February 11, 2003, USTR published Federal Register notices (67 FR 12635, 67 FR 38541, 67 FR 46221, 67 FR 56182, 67 FR 69065 and 68 FR 6982, respectively) making technical corrections to subchapter III of chapter 99 of the HTS to remedy several technical errors introduced in the annex to Proclamation 7529. These corrections ensured that the intended tariff treatment was provided. Since the publication of these Federal Register notices, additional technical errors and omissions in subchapter III of chapter 99 have come to the attention of USTR. The annex to this notice makes technical corrections to the HTS to remedy these errors and omissions. In particular, the annex to this notice corrects errors in the descriptions of the physical dimensions or chemical composition of certain products

excluded from the application of the safeguard measures and increases the quantitative levels for certain products subject to quantitative limits.

Proclamation 6969 authorized the USTR to exercise the authority provided to the President under section 604 of the Trade Act of 1974 (19 U.S.C. 2483) to embody rectifications, technical or conforming changes, or similar modifications in the HTS. Under authority vested in the USTR by Proclamation 6969, the rectifications, technical and conforming changes, and similar modifications set forth in the annex to this notice shall be embodied in the HTS with respect to goods entered, or withdrawn from warehouse for consumption, on or after the dates set forth in the annex to this notice.

Robert B. Zoellick,

United States Trade Representative.

BILLING CODE 3190–01–P

ANNEX

Section I. Unless otherwise specified in a subdivision herein, the following modifications of subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m. EST, on March 20, 2002 or, in the case of corrections in existing provisions, on or after the date of the inclusion in, or of the previous correction of, the individual HTS provision or text being corrected.

1. U.S. note 11 to such subchapter III is hereby modified as follows:

(A) effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after March 20, 2002, the phrase ", as in effect on March 20, 2002," is inserted after the word "subchapter" in subdivisions (b)(i) and (b)(ii);

(B) subdivision (b)(xxv)(B) is modified by deleting "600 t" and by inserting in lieu thereof "1,000 t";

(C) in subdivision (c)(xx)(C), "maximum" is inserted after "sulfur 0.025";

(D) subdivision (c)(xxi) is modified by deleting "50 t" and by inserting in lieu thereof "250 t";

(E) subdivision (c)(xxvii) is modified by inserting "not over" after "phosphorus" and after "sulfur"; by deleting "decarburization 4" and by inserting in lieu thereof "decarburization 6"; by deleting the text from "tensile" through "HRC)", inclusive, and by inserting in lieu thereof the following: "tensile strength/hardness for product thickness of not over 2.0 mm of 1450 +/-100 N/mm^2 (42 to 46 HRC) or 1670 +/- 100 N/mm^2 (42 to 46 HRC), and for product thickness 2.0 mm and over of 1370 +/- 100 N/mm^2 (40 to 44 HRC)"; by deleting the text from "product width of" through "3 m", inclusive, and by inserting in lieu thereof the following: "for product width not over 40 mm, maximum deviation of 0.35 mm on 1.0 m and maximum 3.2 mm on 3 m; for product width over 40 mm but not over 134 mm, maximum deviation of 0.25 mm on 1 m and maximum 1.2 mm on 3 m; for product width over 135mm, maximum deviation of 0.25 mm on 1 m and maximum 0.8 on 3 m;"and by deleting "within g a product maximum half the tolerance zone for T1" and by inserting in lieu thereof "within one coil half the tolerance zone for T1";

(F) subdivision (c)(xxviii)(A) is modified by deleting "0.002 mm" and by inserting in lieu thereof "0.05 mm";

(G) subdivision (c)(lxviii) is modified by deleting "10 t" and by inserting in lieu thereof "1,165 t";

(H) in subdivision (c)(lxxiii)(C), "manganese 0.70" is deleted and "manganese 0.07" is inserted in lieu thereof;

(J) in subdivisions (c)(clvii)(A), (c)(clvii)(B) and (c)(clvii)(C), "width of 228 mm to 305 mm" is deleted at each occurrence and "width of 1,397.0 mm to 1,422.4 mm" is inserted in lieu thereof;

(K) in subdivision (c)(cxlv), "JIS-G3445" is deleted and "JIS-G3444" is inserted in lieu thereof; "maximum" is inserted after "carbon 0.25";

(L) iIn subdivision (c)(lxvii), "0.350 mm in thickness" is deleted and "0.378 mm in thickness" is inserted in lieu thereof;

(M) subdivision (c)(clxxxii) is modified by deleting "1,000 t" and by inserting in lieu thereof "3,000 t"; and

(N) in subdivision (c)(cxc), "phosphorus less than 0.014 percent" is deleted and "phosphorus not over 0.015" is inserted in lieu thereof, and "sulfur less than 0.003" is deleted and "sulfur not over 0.005" is inserted in lieu thereof.

2. The following subheadings of such subchapter III are each modified as follows:

(A) subheading 9903.72.97 is modified by deleting from the article description "600 t" and by inserting in lieu thereof "1,000 t";

(B) subheading 9903.75.04 is modified by deleting "1,000 t" and by inserting in lieu thereof "3,000 t";

(C) subheading 9903.76.86 is modified by deleting "50 t" and by inserting in lieu thereof "250 t";

(D) subheading 9903.76.79 is modified by deleting "300 t" and by inserting in lieu thereof "500 t"; and

(E) subheading 9903.77.32 is modified by deleting "10 t" and by inserting in lieu thereof "1,165 t".

Section II. The following new exclusions being inserted in and other modifications of subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m. EST, on March 20, 2003:

1. The following new subdivisions are inserted at the end of U.S. note 11(c) to subchapter III of chapter 99 of the HTS:

"(ccxiii) cold-rolled coiled flat rolled steel, designated as A-613, the foregoing 2.96 mm to 3.01 mm in thickness; 620 mm wide plus or minus 1 mm; hardness of 202 to 214 HB; having the following chemical composition (percent by weight): chromium 0.4 to 0.7, vanadium 0.15 to 0.25, sulfur not over 0.03, phosphorus not over 0.03, manganese 0.3 to 0.5, silicon 0.25 to 0.4, carbon 0.75 to 0.85 and not over 0.03 aluminum;

(ccxiv) Cold finished nonalloy steel bar of circular cross section, designated as A-611, diameter not greater than 81 mm, surface hardened, precision ground, chemical composition (expressed as percent by weight): carbon 0.50 to 0.57, silicon 0.15 to 0.35, manganese 0.40 to 0.70, phosphorus not greater than 0.025, sulfur not greater than 0.035 and aluminum 0.02 to 0.08; with the following other properties: grain size of 6 or finer as per DIN 50601; hardness HV 670 to 840; surface finish maximum RMS 12; and minimum hardness depth of 0.4 mm;

(ccxv) flat-rolled steel products, not further worked than cold-rolled, designated as A-623 and entered in an aggregate annual quantity not to exceed 15,000 t, the foregoing meeting either of the following sets of characteristics:

(i) grade ASTM A366-97-B, coated with 5 to 15 mg/m^2 of di octyl sebacate oil, meeting the following specifications: thickness 0.40 mm to 1.40 mm; width 711 mm to 1,281 mm; having the following chemical composition (percent by weight): carbon 0.02 to 0.08, manganese not over 0.60, phosphorus not over 0.030 and sulfur not over 0.025; with the following mechanical properties: minimum tensile strength of 269 MPa; maximum yield point of 262 MPa; minimum elongation of 30 percent; Rockwell hardness 48-56 (B scale); and restricted gauge accuracy of 1/4 ASTM; or

(ii) grade ASTM A366-97, coated with 5 to 15 mg/m^2 di octyl sebacate oil, meeting the following specifications: thickness 0.40 mm to1.40 mm and width 832 mm to 1,499 mm; having the following chemical composition (percent by weight): carbon 0.02 to 0.08, manganese not over 0.50, phosphorus not over 0.025 and sulfur not over 0.025; with the following mechanical properties: minimum tensile strength of 268.9 MPa; minimum yield point of 255.1 MPa; minimum elongation of 32 percent; Rockwell hardness 43-55 (B scale); and restricted gauge accuracy 1/4 ASTM;

(ccxvi) unhardened low carbon cold-rolled flat-rolled steel products (soft magnetic iron), designated as A-626 and entered in an aggregate annual quantity not exceed 3 t; thickness range less than or equal to 5 mm, width not over 300 mm, chemical composition (percent by weight): carbon 0.015 to 0.027, silicon not over 0.05, manganese 0.12 to 0.22, phosphorus not over 0.012, sulfur not over 0.025 and chromium not over 0.05; tensile strength of 120 MPa or more but not over 580 MPa; surface finish: Ra not over 0.25 micrometer;

(ccxvii) cold-rolled steel products, in coils per ASTM A625M T3, designated as A-643 and entered in an aggregate annual quantity not to exceed 8,000 t, the foregoing with a matte finish, continuously annealed, thermal flattened, with the following characteristics: thickness 0.254 mm to 0.381mm and width 254 mm to 1016 mm; having the following chemical composition (percent by weight): carbon 0.02 to 0.05, manganese 0.18 to 0.45, phosphorus not over 0.015, sulfur not over 0.025, copper not over 0.10 and aluminum 0.020 to 0.075; having a temper of T3 or 52 to 62 on the Rockwell 30T scale; with the following other properties: average coil gauge down the center of the sheet the ordered gauge thickness +/- 0.0076mm; gauge variation measured on any longitudinal line down the length of a single coil not to exceed 0.01016 mm total; the crown of the coil not to exceed 0.01016 mm when measured along any straight line across the width of the coil (but at least 25.4 mm away from the edge); coil width tolerance + 3.175 mm, - 0 mm; carrying a uniform but minimal amount of D.O.S. or S.2 type oil on all surfaces; surface smooth and free from lamination, deep scratches, pits, scale, rolled in particles, weld joints, edge cracks, holes and excessive edge-wave; thoroughly recrystallized and have a uniform grain size not exceeding ASTM 5; all other tolerances as per ASTM A625;

(ccxviii) cold-rolled flat-rolled steel in coils, grade SAE J1392 045YLF, designated as A-645 and entered in an aggregate annual quantity not to exceed 5,000 t, the foregoing meeting the following criteria: thickness 1.25 mm to 1.65 mm; width 1,140 mm to 1,270 mm; bright finish of Ra value of 0.0 to 0.4 micrometer; surface cleanliness defined as surface carbon of 4 mg/m^2 per side maximum; hydrogen annealed; with maximum yield-to-tensile ratio of 80 percent; and elongation of 24 percent minimum;

(ccxix) cold-rolled flat-rolled high strength steel, non-alloy, designated as A-655 and entered in an aggregate annual quantity not to exceed 4,000 t; the foregoing with a temper pass of 3.75 percent to 4.25 percent reduction after annealing to result in the following mechanical requirements: yield strength at 240 MPa to 340 MPa; tensile strength 310 MPa to 365 MPa; elongation of 33 percent or more; R value of 1.64 to 2.15 and N value of 0.14 to 0.165; prelube required to be applied; thickness 1.7729 mm to 1.8846 mm; coil width 1,377 mm to 1,410 mm; having the following chemical composition (percent by weight): carbon not over 0.15, manganese not over 0.60, phosphorus not over 0.030 and sulfur not over 0.035;

(ccxx) cold-rolled flat-rolled products, designated as A-656 and entered in an aggregate annual quantity not to exceed 120 t; the foregoing meeting the following characteristics: thickness range of 0.30 to 0.40 mm; width not over 5 mm; having the following chemical composition (percent by weight): carbon 0.040 to 0.080, manganese 0.20 to 0.30, phosphorus not over 0.03, sulfur not over 0.030 and aluminum 0.04 to 0.06; mechanical properties: yield point (MPa) of 185 to 280; minimum tensile strength (MPa) of 270; and minimum elongation of 28 percent;

(ccxxi) cold-rolled flat-rolled measuring tape steel products, designated as A-710, the foregoing of SAE 1095, having the following chemical composition (percent by weight): carbon 0.90 to 1.05, silicon 0.15 to 0.35, manganese 0.30 to 0.60, sulfur less than 0.050 and phosphorus less than 0.2; width 4.76 mm to 38.1 mm; thickness 0.114 mm to 0.1542 mm (tolerance +/-0.005 mm); tensile strength 800 to 1,100 MPa; edge deburred, Vickers Hardness Range 210 to 650;

(ccxxii) cold-rolled hardened and tempered flat-rolled steel products, designated as A-714, the foregoing of grade AISI 1095 modified by expanding carbon and decreasing sulfur; having the following chemical composition (percent by weight): carbon 0.9 to 1.05, silicon 0.15 to 0.35, manganese 0.30 to 0.50, phosphorus not over 0.03 and sulfur not over 0.006; width not over 153 mm; thickness 0.8 mm to 1.35 mm; blue polished surface; surface roughness not over 5.0 micrometers; ultimate tensile strength 1,400 MPa to 1,500 MPa; edges deburred or machined; straightness 0.6 to 1.2 mm over 3 m; flatness equal or less than 0.1 percent of the product width;

(ccxxiii) cold-rolled heat-treatable flat-rolled steel products, designated as A-714, the foregoing of grade AISI 1050 modified (as described by the chemical composition) with a decarburized surface; produced by open coil batch annealing facilities for decarburizing, decarburization depths of 10 to 300 micrometers with adjusted carbon transition gradient; having the following chemical composition (percent by weight): carbon 0.44 to 0.55, chromium 0 to 0.40, manganese 0.60 to 0.80, silicon 0.15 to 0.35, phosphorus not over 0.025, sulfur not over 0.01, aluminum less than 0.05; thickness 0.50 mm to 2.00 mm; width 300 mm to 800 mm; not hardened and with low carbon surface (less than 0.1 percent carbon); thickness tolerance T3 and better; yield strength 450 MPa or more; tensile strength 500 MPa or more but not over 850 MPa;

(ccxxiv) cold-rolled heat-treatable flat-rolled steel products, designated as A-714, the foregoing of grade AISI 1065 modified (as described by the chemical composition) with a decarburized surface; produced by open coil batch annealing facilities for decarburizing, decarburization depths of 10 mm to 300 micrometers with adjusted carbon transition gradient; having the following chemical composition (percent by weight): carbon 0.56 to 0.70, chromium 0 to 0.40, manganese 0.60 to 0.80, silicon 0.15 to 0.35, phosphorus not over 0.025, sulfur not over 0.01 and aluminum less than 0.05; thickness 0.50 mm to 2.00 mm; width 300 mm to 800 mm; not hardened and with low carbon surface (less than 0.1 percent carbon); thickness tolerance T3 and better; yield strength 450 MPa or more; tensile strength 500 MPa or more but not over 850 MPa;

(ccxxv) cold-rolled heat-treatable flat-rolled steel products, designated as A-714, the foregoing of grade AISI 1074 modified (as described by the chemical composition) with decarburized surface; produced by open coil batch annealing facilities for decarburizing, decarburization depths of 10 to 300 micrometer with adjusted carbon transition gradient; having the following chemical composition (percent by weight): carbon 0.69 to 0.80, chromium 0 to 0.40, manganese 0.60 to 0.80, silicon 0.15 to 0.35 and aluminum less than 0.05; thickness 0.50 mm to 2.00 mm; width 300 mm to 800 mm; not hardened and with low carbon surface (less than 0.1 percent carbon); thickness tolerance: T3 and better; yield strength of not less than 450 MPa; tensile strength of 500 MPa or more but not over 850 MPa;

(ccxxvi) cold-rolled plating quality steel, designated as A-721 and entered in an aggregate annual quantity not to exceed 3,600 t; the foregoing meeting the following characteristics: thickness of 0.66 mm, 0.75 mm, 0.90 mm, 1.08 mm, 1.38 mm or 1.85 mm, each with a tolerance of +3 percent / -0 percent; width of not less than 1,092 mm and not over 1,219 mm; having the following chemical composition (percent by weight): carbon 0.02 or more but not over 0.05, phosphorus not over 0.03, manganese not over 0.6 and sulfur not over 0.035; with the following properties: surface finish bright, suitable for nickel chrome plating, free from pits, scratches, rust, cracks, or seams, with a surface finish of RMS6 or better; hardness not less than 45Rb and not over 55Rb;

(ccxxvii) cold-rolled flat-rolled steel products, designated as A-756 and entered in an aggregate annual quantity not to exceed 930 t, the foregoing single reduced; T-4 temper; continuous annealed; type MR chemistry; 5C Matte Finish; having a thickness 0.211 mm and width 1073.15 mm to 1219.20 mm or a thickness of 0.239 mm and width of 1092.20 mm or a thickness of 0.312 mm and width of 1104.9 mm to 1193.8 mm; thickness tolerance of plus 5 percent and minus 8 percent; width tolerance of minus 0 mm and plus 3.175 mm; otherwise produced according to ASTM A623-00 and A625-98; certified by the importer that such products will be slit into two coils, each of which is 533.40 mm or more but not over 609.60 mm wide for use in the manufacturing of engine gaskets;

(ccxxviii) cold-rolled black flat-rolled products, designated as A-756 and entered in an aggregate annual quantity not to exceed 100 t, the foregoing single reduced; T-4 temper; continuous annealed; type MR chemistry; 5C Matte Finish; thickness 0.378 mm, plus 5 percent and minus 8 percent tolerances; width 1,155.7 mm, minus 0 and plus 3.175 mm tolerances; otherwise produced to ASTM A623-00 and A625-98; certified by the importer that such products will each be slit into two coils each measuring from 508.00 mm to 635.00 mm wide for use in the manufacturing of engine gaskets;

(ccxxix) cold-rolled flat-rolled, designated as A-626, the foregoing of grade AISI 1095, having the following chemical composition (percent by wight): carbon 0.90 to 1.00, silicon 0.20 to 0.35, manganese 0.55 to 0.75, phosphorus 0.020 maxiumum, sulfur 0.015 maximum, chromium 0.55 to 0.75 and vanadium 0.15 to 0.25; width 4 mm to 40 mm; thickness 0.20 to 0.70 mm; straightness deviation for width less than 8 mm a maximum of 27 mm per 3,000 mm, for width 8 to less than 20 mm a maximum of 18 mm per 3,000 mm, width 20 to 40 mm maximum of 13.5 mm per 3,000 mm; flatness deviation: maximum of 0.3 percent of width; surface finish: bright polished surface free from oxide, discoloration and harmful defects, Ra 0.2 to 0.6 micrometer; edges: fine machined square edges; microstructure: matrix of fine needled tempered martensite with approximately 7 percent residual carbides; tensile strength: 1,550 plus or minus 100 N/mm^2;

(ccxxx) cold-rolled hardened and tempered flat-rolled, designated as A-626, the foregoing of grade AISI 1095; having the following chemical composition (percent by weight): carbon 0.95 to 1.05, silicon 0.20 to 0.35, manganese 0.35 to 0.50, phosphorus not over 0.015 and sulfur not over 0.010; thickness not over 1.00 mm, width not over 300 mm; microstructure being acicular tempered martensite with 3 to 7 percent by volume of spheroidized and uniformly distributed cementite (undissolved carbides) in sizes below 3 micrometers, partial decarburization (fully martensitic) allowed to a depth of 6 percent of thickness; flatness deviation along the rolling direction 0.3 percent of the length maximum; surface finish for thicknesses up to and including 0.381 mm Ra not more than 0.13 micrometer, for thicknesses above 0.381 mm Ra is not more than 0.25 micrometer;

(ccxxxi) bright or blue polished printing doctor blade steel, designated as A-626; the foregoing with thickness not over 0.305 mm, width not over 100 mm; having the following chemical composition (percent by weight): carbon 0.95 to 1.05, silicon 0.20 to 0.35, manganese 0.60 to 0.80, phosphorus not over 0.02, sulfur not over 0.005 and chromium 0.25 to 0.40; microstructure a matrix of fine needled tempered martensite with approximately 10 percent uniformly dispersed residual carbides; surface finish in bright or blue polished finish, free from pits, scratches, rust, cracks or seams; smooth, rounded or beveled edges; edge camber (in each 3000 mm of length) of not greater than 1 mm arc height; cross bow no greater than 0.3 percent of product width; in coils;

(ccxxxii) cold-rolled unhardened flat-rolled products, designated as A-626, the foregoing of grade AISI 1095; having the following chemical composition (percent by weight): carbon 0.95 to 1.05, silicon 0.20 to 0.35, manganese 0.25 to 0.40, phosphorus not over 0.020, sulfur not over 0.001 and chromium 1.35 to 1.5; thickness not over 2 mm, width not over 300 mm; hardness H Rb 95 maximum; tensile strength 480 MPa or more but not over 680 MPa; surface finish: Ra not over 0.25 micrometer;

(ccxxxiii) cold-rolled hardened and tempered flat-rolled products, designated as A-626, the foregoing of grade AISI 1075, having the following chemical composition (percent by weight): carbon 0.62 to 0.72, silicon 1.20 to 1.40, manganese 0.40 to 0.60, phosphorus not over 0.020, sulfur not over 0.010 and chromium 0.40 to 0.60; thickness not over 2.5 mm, width not over 300 mm; Vickers hardness 440 to 650; tensile strength 1,460 MPa or more but not over 2,210 MPa; surface finish: Ra not more than 0.25 micrometer for thicknesses not over 0.381 mm, Ra not more than 0.5 micrometer for thicknesses 0.381 mm or more but not over 2.5 mm;

(ccxxxiv) cold-rolled creasing knife flat-rolled products, designated as A-626, the foregoing with round edge, in straight length, curved or coiled; body microstructure bainitic hardened to 370 plus or minus 20HV; with machined or ground round creasing edge of a knife; width 8.0 mm to 100.0 mm, thickness 0.4 mm to 2.13 mm (thickness tolerance plus or minus 0.015 for thickness 0.4 mm to 0.71 mm, or plus or minus 0.020 mm for thickness 1.05 mm to 2.13 mm; width tolerance plus or minus 0.020 mm for width 8.0 mm to 25.3 mm, plus or minus 0.025 mm for width 25.4 mm to 50.7 mm or plus or minus 0.030 mm for width 50.8 mm to 100.0 mm); cross camber 0.0005 mm/mm rule height maximum; straightness 0.3/1,000 mm rule length maximum; flatness 5 mm/1,000 mm rule length maximum; decarburization zone on both strip surfaces of 0.01 to 0.04 mm; having the following chemical composition (percent by weight): carbon 0.35 to 0.45, silicon 0.10 to 0.45, manganese 0.50 to 0.85, phosphorus less than 0.04, sulfur less than 0.03, chromium 0.05 to 0.30, molybdenum less than 0.05, nickel less than 0.30 and copper less than 0.30;

(ccxxxv) cold-rolled rule steel flat-rolled products, designated as A-626, the foregoing in straight lengths, curved or coiled, with a cutting edge; body microstructure bainitic hardened to either 320 plus or minus 15 or 400 plus or minus 20 HV or 450 plus or minus 20HV or 525 plus or minus 25 HV; machined or a ground sharp cutting edge, high frequency or plasma hardened to 620 plus or minus 30 HV or same as body hard ness; cutting edge having a specific cutting angle of

30 to 60 degrees; having the following chemical composition (percent by weight): carbon 0.53 to 0.57, silicon 0.10 to 0.35, manganese 0.60 to 0.75, phosphorus less than 0.02, sulfur less than 0.01, chromium 0.10 to 0.20, molybdenum less than 0.05, nickel less than 0.10, copper less than 0.10 and aluminum 0.015 to 0.035; width 8.0 to 100.0 mm, thickness 0.4 to 2.13 mm (thickness tolerance: plus or minus 0.015 mm for thickness 0.4 to 0.71 mm, or plus or minus 0.020 mm for thickness 1.05 to 2.13 mm; width tolerance plus or minus 0.020 mm for width 8.0 to 25.3 mm, plus or minus 0.025 mm for width 25.4 to 50.7 mm, or plus or minus 0.030 mm for width 50.8 to 100.0 mm); cross camber 0.0005 mm/mm rule width maximum; straightness 0.3/1,000 mm rule length maximum; flatness 5 mm/1,000 mm rule length maximum; decarburization on strip surfaces 0.01 to 0.04 mm;

(ccxxxvi) cold-rolled flat-rolled steel products, designated as A-632, the foregoing described as DIN125 Cr1; thickness not over 1.00 mm, width not over to 40 mm; having the following chemical composition (percent by weight): carbon 1.22 to 1.32, silicon 0.20 to 0.35, manganese 0.20 to 0.40, phosphorus not over 0.025, sulfur not over 0.010, chromium 0.20 to 0.35 and aluminum not over 0.015; carbides fully spheroidized, having greater than 80 percent of carbides; treated edges, surface finish is blue or bright finish free from pits, scratches, rust, cracks, or seams; edge camber (in each 3,000 mm of length) not greater than 12.70 mm arc height; cross bow (per mm of width) not greater than 0.025 mm; hardness (15N) of 72 to 82.5;

(ccxxxvii) cold-rolled flat-rolled steel products, designated as A-632, the foregoing SAE 1050 modified, having the following chemical composition (percent by weight): carbon 0.47 to 0.60, silicon 0.15 to 0.30, manganese 0.60 to 0.90, phosphorus not over 0.020, sulfur not over 0.015 and aluminum not over 0.020; thickness not less than 0.305 mm nor more than 3.175 mm; width not less than 31.75 mm nor more than 500.00 mm; microstructure spheroidized annealed with skin pass; surface finish is bright, roughness not greater than Ra 0.60 micrometer on both sides; edge finish slit or deburred; flatness less than 0.6 percent of the product width; camber (in each 1,000 mm of length) of not greater than 2.00 mm arc height; and cross bow (per mm of width) of not greater than 3.00 mm; hardness not greater than HRB 85; tensile strength not greater than 582 MPa;

(ccxxxviii) cold-rolled flat-rolled steel products, designated as A-645, the foregoing with transformation induced plasticity (TRIP) effect, microstructure with retained austenite; width 630 mm to 1,400 mm, thickness 3 mm to 4 mm; tensile strength greater than 800 MPa, elongation greater than 23 percent; having the following chemical composition (percent by weight): carbon less than 0.5, manganese not over 2.00, silicon 0.60 to 2.00 and sulfur not over 0.01;

(ccxxxix) cold-rolled flat-rolled magnetic alloy products, designated as A-648, the foregoing containing (percent by weight) 7.4 to 8.4 percent manganese, not over 0.05 percent carbon, no other individual element (except iron) over 0.30 percent and balance iron; mechanical properties yield strength 880 to 1,650 N/mm^2, ultimate tensile strength 980 to 2,000 N/mm^2, 1 to 20 percent elongation; cold-rolled coils; thickness 0.193 to 0.213 mm, width 250.0 to 380.0 mm; surface oiled to prevent rust;

(ccxl) cold-rolled flat-rolled steel products, designated as A-694; having the following chemical composition (percent by weight): carbon not over 0.19, silicon not over 1.60, manganese not over 2.25, phosphorus not over 0.02 and sulfur not over 0.010; tensile strength 980 N/mm^2 or more but not over 1,080 N/mm^2; and stretch flangeability at least 30 percent; meeting one of the following sets of properties:

(i) thickness 0.8 mm or more but not over 1.0 mm; yield strength 700 N/mm^2 or more but not over 850 N/mm^2; elongation 11 percent or more but not over 20 percent;

(ii) thickness 1.0 mm or more but not over 1.2 mm; yield strength 690 N/mm^2 or more but not over 850 N/mm^2; elongation 12 percent or more but not over 21 percent;

(iii) thickness 1.2 mm or more but not over 1.6 mm; yield strength 690 N/mm^2 or more but not over 850 N/mm^2; elongation 13 percent or more but not over 22 percent; or

(iv) thickness 1.6 mm or more but not over 2.3 mm; yield strength 690 N/mm^2 or more but not over 850 N/mm^2; elongation at least 13 percent;

(ccxli) cold-rolled flat-rolled steel products, designated as A-694, having the following chemical composition (percent by weight): carbon not over 0.19, silicon not over 1.60, manganese not over 2.25, phosphorus not over 0.020 and sulfur not over 0.010; tensile strength 980 N/mm^2 or more but not over 1,060 N/mm^2; yield strength 590 N/mm^2 or more but not over 730 N/mm^2; and elongation 13 percent or more but not over 20 percent; meeting one of the following sets of properties:

(i) thickness at least 0.8 mm but not greater than 1.0 mm; yield strength at least 590 N/mm^2 but not greater than 730 N/mm^2; and elongation at least 13 percent but not greater than 20 percent;

(ii) thickness at least 1.0 mm but not greater than 1.2 mm; yield strength at least 580 N/mm^2 but not greater than 730 N/mm^2; and elongation at least 14 percent but not greater than 21 percent;

(iii) thickness at least 1.2 mm but not greater than 1.6 mm; yield strength at least 580 N/mm^2 but not greater than 730 N/mm^2; and elongation at least 14 percent but not greater than 22 percent; or

(iv) thickness at least 1.6 mm but not greater than 2.3 mm; yield strength at least 580 N/mm^2 but not greater than 730 N/mm^2;and elongation at least 14 percent;

(ccxlii) cold-rolled flat-rolled steel products, designated as A-694, the foregoing with thickness 1.0 mm or more but not over 2.3 mm; having the following chemical composition (percent by weight): carbon not over 0.09, silicon not over 1.0, manganese not over 3.00, phosphorus not over 0.012 and sulfur not over 0.005; tensile strength 980 N/mm^2 or more but not over 1080 N/mm^2; yield strength 800N/mm^2 or more but not over 980 N/mm^2; elongation 6 percent or more but not over 14 percent; stretch flangeability at least 70 percent;

(ccxliii) cold-rolled flat-rolled steel products, designated as A-694, the foregoing having the following chemical composition (percent by weight): carbon not over 0.10, silicon not over 0.80, manganese not over 2.5, phosphorus not over 0.015 and sulfur not over 0.010; tensile strength at least 780 N/mm^2; meeting one of the following sets of properties:

(i) thickness at least 0.6 mm but not greater than 0.8 mm; yield strength at least 420 N/mm^2 but not greater than 645 N/mm^2; and elongation at least 14 percent but not greater than 25 percent;

(ii) thickness at least 0.8 mm but not greater than 1.0 mm; yield strength at least 410 N/mm^2 but not greater than 635 N/mm^2; and elongation at least 15 percent but not greater than 26 percent;

(iii) thickness at least 1.0 mm but not greater than 1.2 mm; yield strength at least 400 N/mm^2 but not greater than 625N/mm^2; and elongation at least 16 percent but not greater than 27 percent;

(iv) thickness at least 1.2 mm but not greater than 1.6 mm; yield strength at least 400 N/mm^2 but not greater than 625N/mm^2; and elongation at least 17 percent but not greater than 28 percent; or

(v) thickness at least 1.6 mm but not greater than 2.3 mm; yield strength at least 400 N/mm^2 but not greater than 625 N/mm^2; and elongation at least 18 percent;

(ccxliv) cold-rolled flat-rolled steel products, designated as A-694, the foregoing having the following chemical composition (percent by weight): carbon not over 0.16, silicon not over 0.80, manganese not over 2.60, phosphorus not over 0.012 and sulfur not over 0.010; tensile strength at least 1180 N/mm^2; meeting one of the following sets of properties:

(i) thickness at least 0.8 mm but not greater than 1.0 mm; yield strength at least 835 N/mm^2 but not greater than 1,225 N/mm^2, and elongation at least 5 percent but not greater than 10 percent;

(ii) thickness at least 1.0 mm but not greater than 1.2 mm; yield strength at least 825 N/mm2 but not greater than 1,215 N/mm^2; and elongation at least 5percent but not greater than 17 percent;

(iii) thickness at least 1.2mm but not greater than 1.6 mm; yield strength at least 825 N/mm^2 but not greater than 1,215 N/mm^2; and elongation at least 7 percent but not greater than 18 percent; or

(iv) thickness at least 1.6 mm but not greater than 2.3 mm; yield strength at least 825 N/mm^2 but not greater than 1,215 N/mm^2; and elongation at least 8 percent;

(ccxlv) bright finish cold-rolled saw steel products, designated as A-711, the foregoing flat-rolled; thickness not over 4.0 mm; width not over 710 mm; having the following chemical composition (percent by weight): carbon 0.70 to 0.80, silicon 0.25 to 0.50, manganese 0.60 to 0.80, phosphorus not over 0.035, sulfur not over 0.035 and chromium 0.30 to 0.45; through-hardened to 40 to 50 HRc with a tolerance of +/- 2HRc; thickness tolerance of +/- 0.03 mm; surface finish bright finish free from pits, cracks or seams; smooth edges; cross bow (per mm of width) not greater than 0.0015 mm;

(ccxlvi) bright finish cold-rolled flat-rolled chrome-vanadium saw steel, designated as A-711, the foregoing with thickness not over 4.0 mm, width not over 710 mm; having the following chemical composition (percent by weight): carbon 0.75 to

0.85, silicon 0.25 to 0.45, manganese 0.30 to 0.85, phosphorus not over 0.035, sulfur not over 0.035, chromium 0.40 to 0.70 and vanadium 0.15 to 0.25; through-hardened to 40 to 50 HRc with a tolerance of +/- 2 HRc; thickness tolerance of +/- 0.03 mm; surface finish bright finish free from pits, cracks or seams; smooth edges; cross bow (per mm of width) not greater than 0.0015 mm;

(ccxlvii) cold-rolled hardened and tempered flat-rolled steel products, designated as A-714, the foregoing of grade AISI 1095 modified by expanding carbon and decreasing sulfur; having the following chemical composition (percent by weight): carbon 0.90 to 1.05, silicon 0.15 to 0.35, manganese 0.30 to 0.50, phosphorus 0.03 maximum and sulfur 0.006 maximum; thickness 0.5 to 1.00 mm , thickness tolerance 0.024 mm, width not over 152.4 mm; ultimate tensile strength at least 1590 N/mm^2; flatness less than or equal 0.2 percent of the product width; microstructure completely free from decarburization, carbides are spheroidal and fine within 1 percent to 4 percent per square meter in the uniform tempered martensite; nonmetallic inclusions; sulfide inclusions maximum 0.04 percentage per square meter and oxide inclusions maximum 0.05 percentage per square meter; surface roughness arithmetic maximum 0.25 micrometer, surface roughness maximum 2.5 micrometer;

(ccxlviii) cold-rolled flat-rolled steel products, designated as A-714, having the following chemical composition (percent by weight): carbon 0.10 or more but not over 0.15, manganese 0.50 or more but not over 0.70, phosphorus not over 0.025, sulfur not over 0.025, chromium 0.2 or more but not over 0.4, nickel 0.2 or more but not over 0.4 and aluminum 0.02 or more but not over 0.07; tensile strength not less than 448 MPa not more than 496 MPa; Rockwell hardness B 65 to 75; minimum elongation 35 percent; maximum average scratch depth.0.35 micrometer; thickness at least 0.80 mm but not more than 1.50 mm; width not less than 330 mm nor more than 429 mm;

(ccxlix) cold-rolled flat-rolled measuring tape steel products, designated as A-723, the foregoing produced to specification JIS SK-4; thickness 0.114 mm to 0.152 mm (plus or minus 0.005 mm); having the following chemical composition (percent by weight): carbon 0.94 to 1.00, silicon 0.15 to 0.30, manganese 0.40 to 0.50, phosphorus not over 0.022, sulfur not over 0.010, copper not over 0.08, nickel not over 0.08, chromium 0.10 to 0.25 and aluminum not over 0.010; Vickers hardness HV 290 plus or minus 20; tensile strength 800 to 1100 N/mm^2; surface roughness (RZ) not more than 1 micrometer; quantity of cementite minimum 33 in a 100 micrometer by 100 micrometer area; meeting either of the following sets of properties:

(i) width 4.76 mm to 35 mm (plus or minus 0.05 mm); edge condition deburred edge; camber (in each 2,400 mm of length) of not over 20 mm arc height; or

(ii) width 150 mm to 350 mm (plus or minus 0.50 mm); edge condition slit edge; camber (in each 2,400 mm of length) of not over 6.35 mm arc height;

(ccl) anisotropic annealed and slit magnetic semihard alloy products, designated as A-732, the foregoing having the following chemical composition (percent by weight): nickel 14.7 to 15.3, aluminum 1.7 to 1.9, titanium 0.6 to 0.8 and iron 80 to 82; density of 7.65 g/cm^3; with a remanence of 1.30 to1.60 Tesla; with coercivity of 1.5 to 2.6 plus or minus 0.5 kA/m; Curie temperature 630°C; Vicker hardness in heat treated condition of 600; thickness 0.045 to 0.3 mm; maximum width 240 mm;

(ccli) forged products, designated as A-645, the foregoing in thicknesses of 153 mm to 1270 mm; hardness of 290 to 320 BHN; hardness dispersion including through-thickness measured anywhere on block not exceeding 15 BHN for thicknesses 153 mm to 203 mm, hardness dispersion measured anywhere on block including through-thickness not exceeding 30 BHN for thickness over 203 mm to 1270 mm; homogenous (free of hard spots); conforming to ASTM A578-S9 ultrasonic testing requirements with 3 mm flat bottom hole; rolled for thicknesses not exceeding 813 mm; rough machined for thicknesses greater than 813 mm; oxygen content not exceeding 20 ppm, hydrogen content not exceeding 2 ppm.; having the following chemical composition (percent by weight): carbon 0.235 to 0.275, chromium 1.2 to 1.5, manganese 1.2 to 1.5, molybdenum 0.35 to 0.55, silicon 0.05 to 0.15, sulfur 0.060 to 0.080 and boron 0.002 to 0.004;

(cclii) prehardened hot-rolled mold steel products, designated as A-626; the foregoing comprising rounds from 12 mm to 500 mm diameter, flats with a thickness 12 mm to 1300 mm and width 300 mm to 2000 mm; having the following chemical composition (percent by weight): carbon 0.23 to 0.27, chromium 1.20 to 1.40, manganese 1.20 and 1.40, nickel not more than 0.30, molybdenum 0.35 to 0.55, silicon 0.05 to 0.15, boron 0.0002 to 0.004, sulfur not more than 0.02, phosphorus not more than 0.02 and aluminum not more than 0.07;

(ccliii) hot-rolled flat-rolled products, of high strength grade 100, designated as A-645; the foregoing in thicknesses 2.3 mm to 3.0 mm; widths 1.016 m to 1.524 m; yield strength of 700 to 800 MPa, tensile strength of 750 to 910 MPa; elongation not less than 13 percent; and bending radius of 1.6 times thickness; having the following chemical composition

(percent by weight): carbon not over 0.1, manganese not over 2.0, phosphorus not over 0.025, sulfur not over 0.01, silicon not over 0.4, aluminum 0.02 to 0.06, titanium not over 0.15, molybdenum not over 0.5, niobium (columbium) not over 0.09 and vanadium not over 0.2;

(ccliv) hot-rolled flat-rolled products, designated as A-668, the foregoing in coils, high strength, minimum yield strength of 550 MPa. in compliance with ASTM SAE J1392 Grade 080 XLF; having the following chemical composition (percent by weight): carbon 0.10 maximum, manganese 1.7 maximum, silicon 0.250 maximum, niobium (columbium) 0.080 maximum, vanadium 0.10 maximum and titanium 0.005 maximum; thickness 15.5 mm or more, width 1820 mm or more;

(cclv) hot-rolled or hot-rolled pickled and oiled, high strength, flat-rolled steel coils, designated as A-682; having the following chemical composition (percent by weight): carbon 0.025 to 0.065, manganese 0.195 to 0.305, phosphorus 0.020 maximum, sulfur 0.015 maximum, silicon 0.030 maximum, aluminum 0.015 to 0.055, nitrogen 0.0050 maximum, copper 0.040 maximum, tin 0.010 maximum, chromium 0.040 maximum, nickel 0.040 maximum, molybdenum 0.010 maximum, niobium (columbium) 0.006 to 0.012, vanadium 0.005 maximum, boron 0.0005 maximum and titanium 0.005 maximum; minimum yield strength 248 MPa, minimum tensile strength of 345 MPa, minimum elongation of 30 percent; in the following dimensions: hot-rolled or hot-rolled pickled and oiled: 2.31 mm to 2.72 mm x 1930 mm or more; or 3.0 mm to 3.40 mm x 1930 mm or more;

(cclvi) hot-rolled flat-rolled steel products, designated as A-705; the foregoing in coils, thickness 5.0 mm +/- 0.2 mm, width 6.2 mm +/- 0.2 mm; chemical composition (percent by weight): carbon 0.11 to 0.17, silicon 0.10 maximum, manganese 0.30 to 0.60, phosphorus 0.025 maximum, sulfur 0.025 maximum, molybdenum 0.20 to 0.50, vanadium 0.04 to 0.11 and aluminum 0.02 to 0.08; minimum yield strength of 400 N/mm^2; tensile strength 490 N/mm^2 to 610 N/mm^2; minimum elongation of 22 percent,

(cclvii) hot-rolled hardened and annealed saw steel in sheet form, designated as A-711, the foregoing in thickness not over 15 mm; width not over 1610 mm; through-hardened to 38 to 52 HRc with a tolerance of +/- 2 HRc; thickness tolerances: up to 6 mm thickness: + 0.30 / - 0.0 mm, above 6 mm up to 8 mm thickness: + 0.34 / - 0.0 mm, above 8 mm thickness: +0.38 / - 0.0 mm; surface descaled; smooth edges; cross bow (per mm of width) not greater than 0.001 mm; meeting one of the following chemical compositions (percent by weight):

(i) carbon 0.70 to 0.80, silicon 0.25 to 0.50, manganese 0.60 to 0.80, phosphorus not over 0.035, sulfur not over 0.035 and chromium 0.30 to 0.45;

(ii) carbon 0.75 to 0.85, silicon 0.25 to 0.45, manganese 0.30 to 0.85, phosphorus not over 0.035, sulfur not over 0.035, chromium 0.40 to 0.70 and vanadium 0.15 to 0.25; or

(iii) carbon 0.60 to 0.80, silicon 0.10 to 0.30, manganese 0.35 to 0.60, phosphorus not over 0.035, sulfur not over 0.035, chromium 0.20 to 0.50, molybdenum not over 0.10 and nickel 0.50 to 1.00;

(cclviii) hot-rolled flat-rolled steel, designated as A-754, in coils, having the following chemical composition (percent by weight): carbon 0.10 to 0.14, manganese not over 0.90, phosphorus not over 0.025, sulfur not over 0.003, silicon 0.30 to 0.50, chromium content 0.50 to 0.70, copper 0.20 to 0.40 and nickel not over 0.20; thickness 1.6 to 5.03 mm, width up to 1,550 mm; minimum yield strength 344 N/mm^2, tensile strength 482 to 607 N/mm^2, thickness tolerance according to half of ASTM 568 specification; minimum elongation 22 percent; hardness 79 to 89 HRB; pickled and oiled; surface condition free of injurious defects such as holes, breaks, scabs, scale and embosses;

(cclix) hot-rolled flat-rolled steel, designated A-791; the foregoing being ferritic mono-phase alloyed high-tensile steel; thickness at least 1.2 mm; having the following chemical composition (percent by weight): carbon 0.10 maximum, silicon 0.40 maximum, manganese 2.0 maximum, phosphorus 0.025 maximum, aluminum 0.060 maximum, niobium 0.09 maximum, titanium 0.20 maximum, vanadium 0.20 maximum, molybdenum 0.50 maximum and sulfur 0.010 maximum; in either of the following conditions:

(i) minimum tensile strength 780 MPa, minimum elongation 13 percent, and minimum stretch flange ratio of 70 percent; or

(ii) minimum tensile strength 980 MPa, minimum elongation 10 percent, and minimum stretch flange ratio of 40 percent;

(cclx) hot-rolled flat-rolled steel, designated as A-809, the foregoing in coils; width less than 600 mm; thickness 2.00 mm to 4.00 mm or 10 mm to 13 mm; inclusions determined in accordance of ASTM E45, Method A or DIN 50602

specifications; having the following chemical composition (percent by weight): carbon not over 0.12, silicon not over 0.6, manganese not over 2.1, phosphorus not over 0.025, sulfur not over 0.015, aluminum 0.02 or more, niobium 0.02 or more but not over 0.15, vanadium not over 0.20, titanium not over 0.20, molybdenum not over 0.20 and boron not over 0.20; minimum yield strength 759 MPa in both longitudinal and transverse directions, minimum tensile strength 814 MPa, Charpy impact values greater than or equal to 17 J -40°C; elongation greater than or equal to 12 percent; minimum bendability 1.125 times thickness;.

(cclxi) hot-rolled floor plate in coils, designated as A-645 and entered in an aggregate quantity not to exceed 8,500 t; in widths greater than 1,651 mm and meeting either of the sets of properties described below:

(i) thickness from 2 mm to 16 mm; commercial quality grade; having the following chemical composition (percent by weight): carbon of 0.02 to 0.10, silicon of 0.03 maximum, manganese of 0.15 to 0.50, phosphorus not over 0.03, sulfur not over 0.03, vanadium not over 0.008, aluminum of 0.01 to 0.08 and nitrogen not over 0.014; or

(ii) grade A36; having the following chemical composition (percent by weight): carbon of 0.04 to 0.21 , silicon not over 0.40, manganese not over 1.50, phosphorus not over 0.03, sulfur not over 0.025, vanadium not over 0.05, aluminum from 0.010 to 0.05 and nitrogen not over 0.009;

(cclxii) hot-rolled steel, designated as A-645 and entered in an aggregate quantity not to exceed 250 t; in grade SAE 1060; thickness 1.78 mm or more but less than 2.54 mm, widths of 1016 mm to 1524 mm; having the following chemical composition (percent by weight): carbon of 0.57 to 0.65, manganese of 0.6 to 0.75, phosphorus not over 0.025, sulfur not over 0.005, silicon not over 0.25, aluminum 0.015 to 0.03, copper not over 0.1, nitrogen not over 0.01, and combined nickel, chromium and molybdenum not over 0.45;

(cclxiii) hot-rolled steel, designated as A-645 and entered in an aggregate quantity not to exceed 250 metric tons; in grade SAE 1080/1085 with the following characteristics: thickness of at least 1.78 mm but less than 2.06 mm; widths greater than 1,500 mm to 1,650 mm; inclusion controlled according to ASTM E45 (average value on ten fields: A max 1.5, B max 1, C max 1, D max 1.5) having the following chemical composition (percent by weight): carbon 0.815 to 0.884, manganese 0.8 to 0.9, phosphorus not over 0.02, sulfur not over 0.01, silicon 0.15 to 0.25, aluminum 0.02 to 0.04, copper not over 0.35, combined nickel, chromium, and molybdenum not over 0.3; in coils;

(cclxiv) heat treatable boron hot rolled flat-rolled steel, designated as A-645 and entered in an aggregate quantity not to exceed 250 t; the foregoing with thickness 1.7 mm or more but less than 1.9 mm; having the following chemical composition (percent by weight): carbon 0.27 to 0.33, manganese 1.15 to 1.45, silicon 0.20 to 0.30, aluminum over 0.02, phosphorus not over 0.020, sulfur not over 0.005, copper not over 0.060, nickel not over 0.050, chromium from 0.15 to 0.25, titanium from 0.02 to 0.05, nitrogen not over 0.009 and boron from 0.001 to 0.004; calcium treated;

(cclxv) hot-rolled flat-rolled high strength low alloy grade 100 heavy gauge steel, designated as A-645 and entered in an aggregate quantity not to exceed 5,000 t; the foregoing with thickness 4.5 mm to 12.7 mm; width 1.524 m to 1.829 m, with a yield strength of 700 to 800 MPa; tensile strength of 750 to 910 MPa; elongation not less than 13 percent; guaranteed bending radius of 1.6 times a thickness less than 6 mm and 1.8 times a thickness greater than 6 mm; having the following chemical composition (percent by weight): carbon not over 0.1, manganese not over 2.0, phosphorus not over 0.025, sulfur not over 0.01, silicon not over 0.4, aluminum from 0.02 to 0.06, titanium not over 0.15, molybdenum not over 0.5, niobium (columbium) not over 0.09 and vanadium not over 0.2;

(cclxvi) hot-rolled flat-rolled steel, designated as A-649 and entered in an aggregate quantity not to exceed 10,000 t; the foregoing with thickness 1.8 mm or more but not over 2.2 mm; width not over 1524 mm; having the following chemical composition (percent by weight): carbon 0.05 to 0.13, manganese 1.20 to 1.65 and phosphorus equal to or less than 0.035; yield strength 550 to 575 MPa; tensile strength 620 to 760 MPa; elongation minimum 20 percent; bend radius of 2 times material thickness;

(cclxvii) hot-rolled flat-rolled steel, designated as A-649 and entered in an aggregate quantity not to exceed 8,000 t; ASTM A507 SAE-number 4130; 95 percent spheroidized annealed; thickness 2.48 mm to 6.12 mm; having the following chemical composition (percent by weight): carbon of 0.28 to 0.33, manganese of 0.40 to 0.60, phosphorus of 0.02 maximum, silicon of 0.03 maximum and chromium of 0.80 to 1.1; hardness Rb maximum of 85;

(cclxviii) hot-rolled flat-rolled products, ASTM A1011 CS type A (modified) as rolled or tension leveled hot rolled pickled and oiled flat rolled steel coils, designated as A-680 and entered in an aggregate quantity not to exceed 1,000 t; whether temper rolled or not, with surface requirements equal to exposed, possessing non-earing properties; thicknesses from 1.37 mm but less than 1.7 mm and with thickness tolerance of one half or less than standard thickness tolerance as

specified in ASTMA568 ANDA635; having the following chemical composition (percent by weight): carbon 0.025 to 0.070, manganese 0.175 to 0.274, phosphorus not over 0.017, sulfur not over 0.024, silicon not over 0.024, aluminum 0.025 to 0.060, nitrogen 0.0025 to 0.0050, copper not over 0.040, tin not over 0.10, chromium not over 0.040, nickel not over 0.040, molybdenum not over 0.010, niobium (columbium) not over 0.005, vanadium not over 0.005, boron not over 0.0005 and titanium not over 0.005;

(cclxix) hot-rolled flat-rolled A1011 CS TYPE B (modified) hot rolled or tension leveled hot rolled pickled and oiled flat rolled steel coils, designated as A-680 and entered in an aggregate quantity not to exceed 1,000 t; whether temper passed or not with surface requirements equal to exposed; thicknesses from 1.397 mm but less than 1.676 mm and with thickness tolerance of one half or less than standard thickness tolerance (ASTM A568 and A635; having the following chemical composition (percent by weight): carbon 0.080 to 0.100, manganese 0.300 to 0.400, phosphorus not over 0.020, silicon not over 0.030, aluminum 0.025 to 0.064, nitrogen not over 0.0050, copper not over 0.070, tin not over 0.024, chromium not over 0.060, nickel not over 0.060, molybdenum not over 0.015, niobium (columbium) not over 0.005, vanadium not over 0.005, boron not over 0.0005 and titanium not over 0.005;

(cclxx) hot-rolled flat-rolled, pickled and oiled, tension leveled, high strength steel coils, designated as A-680; the foregoing according to SAE J1392 grade 060XLF modified with inclusion shape control and following chemistry (percent by weight): carbon 0.070 to 0.110; manganese 1.220 to 1.354; phosphorus 0.020 maximum, sulfur 0.005 maximum, silicon 0.120 maximum, aluminum 0.015 to 0.055, nitrogen 0.0060 maximum, copper 0.040 maximum, tin 0.010 maximum, chromium.040 maximum., nickel 0.040 maximum, molybdenum 0.010 maximum, niobium (columbium) 0.015 to 0.025, vanadium 0.005 maximum, boron 0.0008 maximum and titanium 0.005 maximum; minimum yield strength 414 MPa, minimum tensile strength 482 MPa and minimum elongation of 20 percent; thickness 3.404+0.203/-0 mm and width 1.350.645+38.100/-.0 mm or thickness 3.584+0.203/-0 mm and width 1.279.525+38.100/-.0 mm;

(cclxxi) hot-rolled pickled and oiled tension leveled, high strength, flat-rolled steel coils, designated as A-680; the foregoing according to SAE J1392 grade 070XLF mod with inclusion shape control and following chemistry in (percent by weight): carbon 0.080 to 0.120, manganese 1.370 to 1.504, phosphorus 0.020 maximum, sulfur 0.005 maximum, silicon 0.120 maximum, aluminum 0.015 to 0.055, nitrogen 0.0060 maximum, copper 0.040 maximum, tin 0.010 maximum, chromium 0.040 maximum, nickel 0.040 maximum, molybdenum 0.010 maximum, niobium (columbium) 0.040 to 0.050, vanadium 0.005 maximum, boron 0.0008 maximum and titanium 0.005 maximum; minimum yield strength of 482 MPa, minimum tensile strength of 550 MPa; thickness 3.584+0.203/-0 mm and width 1,288.725 +31.750/-0 mm;

(cclxxii) hot-rolled or hot rolled pickled and oiled flat-rolled steel coils, designated as A-682 and entered in an aggregate quantity not to exceed 14,500 t; having the following chemical composition (percent by weight): carbon 0.090 to 0.130, manganese 0.425 to 0.575, phosphorus 0.020 maximum, sulfur 0.020 maximum, silicon 0.020 maximum, aluminum 0.020 to 0.060, nitrogen 0.0030 to 0.0050 maximum, copper 0.040 maximum, tin 0.010 maximum, chromium 0.040 maximum, nickel 0.040 maximum, molybdenum 0.010 maximum, niobium (columbium) 0.005 maximum; vanadium 0.005 maximum, boron 0.0005 maximum and titanium 0.005 maximum; minimum yield strength 248 MPa, minimum tensile strength 345 MPa, minimum elongation of 30 percent; width 1,778 mm or more, thickness 2.49 mm to 3.51 mm;

(cclxxiii) hot-rolled floor plate in coils, designated as A-688; the foregoing being pattern number 4, grade ASTMA786, thickness of 4.75 mm or more but less than 6.4 mm, width of 1,829 mm or greater;

(cclxxiv) hot-rolled flat-rolled steel in coils; in widths from 733 mm to 1,244.6 mm (width tolerance of 20.0 mm) having coil weights of 17.89 kg/mm of width or more; designated as A-689 and entered in an aggregate annual quantity not to exceed 35,000 t; camber tolerance of not more than 20 mm per 10 m, thickness ranging from 1.80 mm to 3.00 mm (tolerances of 0.1 mm); flatness deviation not to exceed 2.5 percent steepness ratio (defined as height over the wavelength); in one of the following combinations of chemical compositions (percent by weight) and widths: (A) width from 733 to 1,244.6 mm, inclusive, and containing 0.010 to 0.08 carbon, 0.16 to 0.30 manganese, 0.025 maximum silicon, 0.020 maximum phosphorus, 0.020 maximum sulfur, 0.008 maximum nitrogen and 0.02 to 0.08 aluminum; (B) of a width from 915 to 1,244.6 mm, inclusive, and containing 0.08 to 0.13 carbon, 0.30 to 0.60 manganese, 0.035 maximum silicon, 0.025 maximum phosphorus, 0.025 maximum sulfur, 0.008 maximum nitrogen and 0.02 to 0.07 aluminum; (C) of a width from 762 to 1,244.6 mm, inclusive, and containing 0.13 to 0.17 carbon, 0.30 to 0.60 manganese, 0.035 maximum silicon, 0.025 maximum phosphorus, 0.025 maximum sulfur, 0.010 maximum nitrogen and 0.02 to 0.07 aluminum; or (D) of a width from 733 to 1,244.6 mm, inclusive, and containing 0.010 maximum carbon, 0.10 to 0.20 manganese, 0.030 maximum silicon, 0.020 maximum phosphorus, 0.020 maximum sulfur, 0.007 maximum nitrogen, 0.02 to 0.075 aluminum and 0.15 maximum titanium; all certified by the importer of record to be

used for rerolling in a reversing cold reduction mill, with a reduction in thickness during the cold rolling process of at least 40;

(cclxxv) hot-rolled coils, designated as A-699 and entered in an aggregate quantity not to exceed 500 t; the foregoing meeting ANSI 1095 in thickness from 1.75 mm but less than 2.03 mm and in widths over 685.8 mm but not over 1,220 mm; and modified to meet the following chemical specifications (percent by weight): 0.70 to 1.04 carbon, 0.30 to 0.100 manganese, not over 0.025 phosphorus, not over 0.015 sulfur, 0.025 to 0.065 aluminum, 0.15 to 0.25 silicon, not over 0.100 copper, not over 0.100 nickel, 0.090 to 0.30 chromium, no over 0.025 molybdenum, not over 0.020 tin, not over 0.008 niobium, not over 0.008 titanium, not over 0.0008 boron, not over 0.010 nitrogen and not over 0.008 vanadium;

(cclxxvi) hot-rolled ferritic mono-phase alloyed high-tensile steel, designated as A-791; the foregoing in thickness of 1.2 mm or more but less than 1.8 mm; having the following chemical composition (percent by weight): carbon 0.10 maximum , silicon 0.40 maximum, manganese 2.0 maximum, phosphorus 0.025 maximum, aluminum 0.060 maximum, niobium 0.09 maximum, titanium 0.20 maximum, vanadium 0.20 maximum, molybdenum 0.50 maximum and sulfur 0.010 maximum; minimum tensile strength of 590 MPa, minimum elongation of 16 percent, and a minimum stretch flange ratio of 80 percent;

(cclxxvii) cold-rolled electrolytically nickel-coated steel foil, designated as A-604; the foregoing being substrate SAE 1008 A-1 Killed Quality; having the following chemical composition (percent by weight): carbon not over 0.10, manganese not over 0.50, phosphorus not over 0.030 and sulfur not over 0.035; substrate thickness 0.050 mm or more but not over 0.0572 mm, width 607.6 mm or more but not over 611.6 mm; as rolled with a Rockwell hardness not less than 83on 15T scale; unalloyed nickel coating 2.54 micrometers or more in thickness; non-brilliant finish; in coils wound on 76.6 mm diameter steel cores and with 355.6 mm maximum outer diameter;

(cclxxviii) flat-rolled products, designated as A-619, the foregoing coated with zinc according to ASTM-Designation 653/A 653M Type A/ Grade 40, 150 g/m^2 to 280 g/m^2 of zinc for both sides; having the following chemical composition (percent by weight): carbon not over 0.20, manganese not over 1.20, sulfur not over 0.035, nickel not over 0.20, chromium not over 0.15, vanadium not over 0.008 and titanium not over 0.30; longitudinal mechanical properties of base metal: yield strength 185 MPa minimum, tensile strength 310 MPa or more but not over 540 MPa, elongation 22 percent minimum; edges rounded and galvanized after slitting; width 40 mm or more but not over 60 mm; weight 0.63 kg/ linear m to 0.86 kg/linear m; thickness 1 mm or more but not over 2 mm; in coils with outside diameter 750 mm or more but not over 1,300 mm;

(cclxxix) nickel-coated cold-rolled slit-to-width steel, in coils, designated as A-643, the foregoing in thickness 0.250 mm or more but not over 1.828 mm, width 25.39 mm or more but not over 76.17 mm; having the following chemical composition (percent by weight): carbon 0.020 to 0.05, manganese 0.10 to 0.30, phosphorus not over 0.025, sulfur not over 0.020, silicon not over 0.025, aluminum 0.030 to 0.085, nitrogen not over 0.007 and copper plus nickel plus chromium not over 0.2; aluminum-killed, continuously cast; electrolytically coated with nickel free from pits or blisters on one surface ("plated side") of the product with a minimum thickness of 0.00381 mm and with nickel thickness of not over 0.000762 mm on the opposite "bare" side; in coils with a maximum inside diameter of 50.8 cm and a maximum outside diameter of 172.72 cm;

(cclxxx) copper coated cold-rolled slit-to-width steel, designated as A-643, the foregoing in coils; thickness 0.250 mm or more but not over 1.828 mm, width 25.39 mm or more but not over 76.17 mm; having the following chemical composition (percent by weight): carbon 0.020 to 0.08, manganese 0.10 to 0.45, phosphorus 0.02 maximum, and sulfur 0.035 maximum; rimmed, capped, aluminum-killed, or continuously cast; coated with smooth and clean copper, free from pits, blisters, or roughness, deposited electrolytically on the two flat surfaces of the strip in an amount, for both sides, of not less than 50.0 and not more than 100.7 g per m sq of product (or, for a single side, of not less than 25.0 and not more than 50.35 g per m sq. of surface); in coils with inside diameter 40.6 cm or more but not over 50.8cm and a maximum outside diameter of 140.0cm;

(cclxxxi) aluminized manganese-boron steel, designated as A-645; the foregoing sometimes known commercially as "USIBOR"; having the following chemical composition (percent by weight): carbon 0.20 to 0.25; manganese 1.10 to1.40, sulfur not over 0.008, aluminum not over 0.06, silicon not over 0.50, boron 0.002 to 0.005 and titanium not over 0.05; in coils, width 620 mm or more but not over 1,600 mm; thickness 0.6 mm or more but not over 3.0 mm; ASTM 463-A coating; yield strength 370 to 490 MPa, tensile strength greater than 550 MPa, and elongation 10 percent or more;

(cclxxxii) steel-backed bearing material, in coils, designated as A-646, the foregoing of a thickness 0.95 mm or more but not over 2.51 mm; width 5 mm to 51 mm, inclusive, or 170 mm to 200 mm, inclusive; of SAE1010 steel with a sintered bronze layer consisting (by weight) of 91.3 percent tin, 0 to 6 percent lead, 0 to 0.2 percent phosphorus and balance copper; said bronze being impregnated with one of the following compositions (by weight):

(i) 30 to 40 percent polytetrafluoroethylene and 60 to 70 percent lead oxide, with the lead oxide being dispersed throughout the polytetrafluoroethylene in a scale-like arrangement;

(ii) 50 to 60 percent polytetrafluoroethylene, 5 to10 percent fluorinated ethylene propylene, with the balance a tin-lead alloy dispersed in globular form throughout the polytetrafluoroethylene and fluoridated ethylene propylene;

(iii) 70 to 80 percent polytetrafluoroethylene, 8 percent fluorinated ethylene propylene, with the balance consisting of a tin-oxide alloy dispersed in globular form throughout the polytetrafluoroethylene and fluorinated ethylene propylene and a polyester resin dispersed in fiber form;

(iv) 95 to 99.5 percent polyacetal with a balance of titanium dioxide;

(v) 70 to 80 percent polytetrafluoroethylene, 8 to 10 percent fluorinated ethylene propylene, with the balance consisting of a tin oxide alloy dispersed in globular form throughout the polytetrafluoroethylene and fluoridated ethylenepropylene and carbon dispersed in fiber form; or

(vi) 80 to 90 percent polytetrafluoroethylene, with the balance carbon fibers dispersed throughout the polytetrafluoroethylene;

(cclxxxiii) flat-rolled products, designated as A-688, the foregoing coated with zinc-aluminum alloy, such alloy consisting of 95 percent zinc and 5 percent aluminum by weight; sometimes referred to as (but not limited to) products known as ``Ragal Galfan''; width of 1,220 mm or more;

(cclxxxiv) flat-rolled coated SAE 1009 steel in coils, designated as A-695, meeting one of the following characteristics (compositions by weight):

(i) thickness not less than 0.915 mm but not over 0.965 mm, width not less than 19.75 mm or more but not over 20.35 mm; with a two-layer coating; the first layer consisting of tin 9 to 11 percent, lead 9 to 11 percent, zinc less than 1 percent, other materials (other than copper) not over 1 percent and balance copper; the second layer consisting of lead 45 to 55 percent, molybdenum disulfide (MoS_2) 3 to 5 percent, other materials not over 2 percent, balance polytetrafluoroethylene (PTFE);

(ii) thickness not less than 0.915 mm or more but not over 0.965mm; width not less than 18.65 mm or more but not over19.25 mm; with a two-layer coating; the first layer consisting of tin 9 to 11 percent, lead 9 to 11 percent, zinc less than 1 percent, other materials (other than copper) not over 1 percent, balance copper; the second layer consisting of lead 33 to 37 percent, aromatic polyester 13 to 17 percent, other materials (other than polytetrafluoroethylene (PTFE)) less than 2 percent, balance PTFE;

(iii) thickness not less than 0.920 mm or more but not over 0.970 mm; width not less than 21.35 mm or more but not over 21.95 mm; with a two-layer coating; the first layer consisting of tin 9 to 11 percent, lead 9 to 11 percent, zinc less than 1 percent, other materials (other than copper) not over 1 percent, balance copper; the second layer consisting of lead 33 to 37 percent, aromatic polyester 13 to 17 percent, other materials (other than PTFE) less than 2 percent, balance PTFE;

(iv) thickness not less than 1.80 mm or more but not over 1.85 mm, width not less than 14.7 mm or more but not over 15.3 mm; with a lining consisting of tin 2.5 to 4.5 percent, lead 21.0 to 25.0 percent, zinc less than 3 percent, iron less than 0.35 percent, other materials (other than copper) less than 1 percent, balance copper;

(v) thickness 1.59 mm or more but not over 1.64 mm; width 14.5 mm or more but not over 15.1 mm; with a lining consisting of tin 2.3 to 4.2 percent, lead 20 to 25 percent, iron 1.5 to 4.5 percent, phosphorus 0.2 to 2.0 percent, other materials (other than copper) less than 1 percent, with a balance copper;

(vi) thickness not less than 1.75 mm or more but not over 1.8 mm; width nor less than 18.0 mm or more but not over 18.6 mm; with a lining consisting of tin 2.3 to 4.2 percent, lead 20 to 25 percent, iron 1.5 to 4.5 percent, phosphorus 0.2 to 2.0 percent, other materials (other than copper) less than 1 percent, with a balance copper;

(vii) thickness 1.59 mm or more but not over 1.64 mm; width 13.6 mm or more but not over14.2 mm; with a lining consisting of tin 2.3 to 4.2 percent, lead 20 to 25 percent, iron 1.5 to 4.5 percent, phosphorus 0.2 to 2.0 percent, other materials (other than copper) less than 1 percent, with a balance copper;

(viii) thickness 1.59 mm or more but not over 1.64 mm; width 11.5 mm or more but not over12.1 mm; with a lining consisting of tin 2.3 to 4.2 percent, lead 20 to 25 percent, iron 1.5 to 4.5 percent, phosphorus 0.2 to 2.0 percent, other materials (other than copper) less than 1 percent, with a balance copper;

(ix) thickness 1.59 mm or more but not over 1.64 mm; width 11.2 mm or more but not over 11.8 mm, with a lining consisting of copper 0.7 to 1.3 percent, tin 17.5 to 22.5 percent, silicon less than 0.3 percent, nickel less than 0.15 percent, other materials (other than copper) less than 1 percent, balance copper;

(x) thickness 1.59 mm or more but not over1.64 mm; width 7.2 mm or more but not over 7.8 mm; with a lining consisting of copper 0.7 to 1.3 percent, tin 17.5 to 22.5 percent, silicon less than 0.3 percent, nickel less than 0.15 percent, other materials (other than copper) less than 1 percent, balance copper; or

(xi) thickness 1.72 mm or more but not over1.77 mm; width 7.7 mm or more but not over 8.3 mm; with a lining consisting of copper 0.7 to 1.3 percent, tin 17.5 to 22.5 percent, silicon less than 0.3 percent, nickel less than 0.15 percent, other materials (other than copper) less than 1 percent, balance copper;

(cclxxxv) cold rolled flat-rolled steel, designated as A-719; the foregoing continuously hot-dip zinc coated; with round rolled and zinc coated edges, certified by the importer to meet the following specifications: steel strip dimensions (before zinc coating): thickness 1.45 +/-0.02 mm or 1.85+/-0.02 mm, width 15 mm to 60 mm +/-0.25 mm; edges round rolled; having the following chemical composition (percent by weight): carbon not over 0.07, silicon not over 0.02, manganese 0.15 to 0.30, phosphorus not over 0.025, sulfur not over 0.030, nitrogen not over 0.010 and aluminum 0.020 to 0.100; annealed in reducing protective gas atmosphere, with 7 percent hydrogen; tolerance in thickness with zinc coating: +/- 0.03 mm, tolerance in width with zinc coating: +/- 0.3 mm; tensile strength 310 to 450 N/mm^2, elongation 22 percent minimum; zinc coating Super High Grade Zinc according to EN 1179Z1,SHG.; coating mass, including both surfaces, minimum 220 g/m^2, corresponding to a minimum coating thickness of 15.4 micrometers per surface; the adhesion of the coating shall, after bending the zinc coated strip 180 degrees tightly together in any direction, show no signs of flaking;

(cclxxxvi) ultra-thin, prepainted, galvanized alloy steel, designated as A-742, the foregoing having the following chemical composition (percent by weight): carbon 0.020 to 0.070, silicon 0.025 to 0.050, manganese 0.20 to 0.45, phosphorus 0.015 to 0.040, sulfur 0.020 to 0.050 and titanium 0.05 to 0.07; plated or coated with zinc (120 g/m^2); one side coated with epoxy primer plus polyester paint with total thickness not over 0.023 mm, in colors white, almond, brown and taupe; the other side coated with grey polyester primer with no wax or silicon with a thickness not greater than 0.104 mm (0.0041 mil); tensile strength 413 to 500 MPa; yield strength 396 to 500 MPa, elongation from 16 to 21 percent; steepness (ratio of height to wave length) less than one percent; meeting one of the following sets of dimensions:

(i) thickness 0.21 mm or more but not over 0.25 mm, and width 803 mm or more but not over 810 mm or width 846 mm or more but not over 853 mm; or

(ii) thickness 0.18 mm or more but not over 0.22 mm, and width 374 mm or more but not over 380 mm or width 417 mm or more but not over 424 mm or width 493 mm or more but not over 500 mm or width 622 mm or more but not over 629 mm;

(cclxxxvii) cold-rolled, extra deep draw quality steel, designated as A-743, the foregoing electrocoated on both sides with zinc-nickel coating of weight 34 g/m^2 or more but not over 49 g/m^2, thickness 0.75 mm (+/- 0.06 mm), width1570 mm (+5 mm/-0 mm); having the following chemical composition (percent by weight): carbon not over 0.003, sulfur not over 0.006, silicon not over 0.03, manganese not over 0.20, phosphorus not over 0.020 and titanium stabilized; certified by the importer to have the following mechanical properties using JIS (Japan Industry Standard) testing methods: elongation not less than 45 percent or more but not over 53

percent, yield strength not less than 110 MPa or more but not over 155 MPa, tensile strength of not less than 260 MPa but not over 300 MPa, and R-Value equal to or greater than 1.8;

(cclxxxviii) polymer coated electrolytic chromium/chromium oxide coated cold reduced low carbon steel, designated as A-684; the foregoing manufactured according to Euro norm standard EN10202:2001; thickness 0.1 mm or more but not over 0.6 mm and width not over 1,000 mm; having the following chemical composition (percent by weight): carbon 0.015 or more but not over 0.12, manganese 0.15 or more but not over 0.6, phosphorus not over 0.02, silicon not over 0.025 and sulfur not over 0.02; proof/lower yield strength not less than 180 MPa and not more than 700 MPa (measured according to Euronorm EN10002 part 1.2001), elongation not less than 0.5% and not more than 40%; polymer coating on one side of the steel strip consisting amorphous layer of polyethyleneterepthalate (PET) that has been directly extruded or laminated in two and/or three layers and having a thickness not less than 15 micrometers and not more than 200 micrometers; coating second side may be the same as the first side or be composed of a similarly extruded layer of polypropylene (PP) polymer that has a thickness not less than 15 micrometers and not more than 200 micrometers;

(cclxxxix) gray chromate-free coated commercial quality flat-rolled steel products, designated as A-600, the foregoing having resin coatings and electrolytic zinc coatings that are chromate free, with zinc coating weight 8.5 g/m^2 or more and resin coating weight of 0.2 g/m^2 or more but not over 1.8 g/m^2; gray color; anti-fingerprint; meeting ASTM A366 or ASTM A366M standards; thickness of 0.3 mm or more but not over 2.3 mm; width of 600 mm or more but not over 1,854 mm; yield strength of 170 MPa to 260 MPa; tensile strength of 300 MPa to 360 MPa; elongation of 34 percent to 48 percent; having the following chemical composition (percent by weight): carbon not over 0.15, manganese not over 0.60, phosphorus not over 0.10, sulfur not over 0.035, copper not over 0.20, nickel not over 0.20, chromium not over 0.15, molybdenum not over 0.08, vanadium not over 0.008, titanium not over 0.008 and columbium or niobium not over 0.008;

(ccxc) gray chromate-free coated drawing quality flat-rolled steel products, designated as A-600, with the following characteristics: having resin coatings and electrolytic zinc coatings that are chromate free, with zinc coating weight 8.5 g/m^2 or more and resin coating weight of 0.2 g/m^2 or more but not over 1.8 g/m^2; gray color; anti-fingerprint; meeting ASTM A620 or ASTM A620M standards; thickness of 0.3 mm or more but not over 2.3 mm; width of 600 mm or more but not over 1,854 mm; yield strength of 130 MPa to 190 MPa; minimum tensile strength of 270 MPa; elongation of 38 percent to 52 percent; having the following chemical composition (in percent by weight): titanium not over 0.06, carbon not over 0.003, manganese not over 0.18, phosphorus not over 0.022, sulfur not over 0.009, aluminum 0.01 to 0.06, silicon not over 0.034, copper not over 0.05, nickel not over 0.05, chromium not over 0.06 and columbium or niobium 0.003 to 0.007;

(ccxci) galvannealed flat-rolled steel products, designated as A-615 and entered in an aggregate annual quantity not to exceed 80,000 t, the foregoing vacuum degassed, interstitial-free; with gauge from 0.61 mm or more but not over 2.10 mm and width 1219.2 mm or more but not over 1830 mm; having the following chemical composition (percent by weight): carbon not over 0.02, silicon 0.06 to 0.10, manganese not over 0.40, phosphorus not over 0.02, sulfur not over 0.02, aluminum 0.01 or more, copper not over 0.20, nickel not over 0.20, chromium not over 0.15, molybdenum not over 0.06 and titanium not over 0.30; yield strength from 120 to 180 N/mm^2 and tensile strength of not over 350 N/mm^2;

(ccxcii) coated cold-rolled flat-rolled steel products, designated as A-625 and entered in an aggregate quantity not to exceed 2,700 t, the foregoing coated with zinc by using an electrolytic process in coils, then top coated with dark metallic black, crystal white, metallic silver or bisque by using rolling process in coils; meeting the following characteristics: width not over 1524 mm; referenced in ASTM A879 and A917; minimum requirements of paint coated steel, CS Type B; top coating weight 19 or more but not over 30 micrometers; backer coat from 13 to 20 micrometers any color; substrate 0.457 mm to 0.533 mm with a coating weight of 40 g/m^2 in accordance with testing methods described in ASTM A754, using an X-ray fluorescence nondestructive test method; having the following chemical composition (percent by weight): carbon not over 0.06, manganese not over 0.50, phosphorus not over 0.02 and sulfur 0.025; yield strength 138 to 241 MPa , elongation with 51 mm bar, greater than or equal to 32 percent; r value 1.4 to 1.8, n value 0.19 to 0.24;

(ccxciii) coated flat-rolled SAE C1006 DDQ (deep draw quality) steel, designated as A-663 and entered in an aggregate annual quantity not to exceed 4,250 t, the foregoing being hot-dipped galvanized steel sheet, better than 15-I units flat of sheet as cut from the coil, thickness 0.38 to 0.63 mm with a desired tolerance of plus or minus 0.025 mm and with 40 to 60 grams per meter square of zinc coating per side; painted one side with 20 to 30 percent cross-linked polyester paint; coil size 6000 to 9000 kg; width 730 to 940 mm; having the following chemical composition (percent by weight): carbon not over 0.08, manganese 0.25 percent or more but not over 0.40, silicon not over 0.30, phosphorus not over 0.04 and sulfur not over 0.05;

(ccxciv) continuous galvannealed and phosphate-coated (patented L-treated) flat-rolled steel products, designated as A-676 and entered in an aggregate annual quantity not to exceed 500 t, the foregoing extra deep draw quality, single stabilized, interstitial-free, with a minimum elongation of 46 percent, meeting the following characteristics: thickness 0.65 mm to 0.85 mm; width 1,650 mm or more; having the following chemical composition (percent by weight): carbon not over 0.0025, sulfur not over 0.01, manganese not over 0.15 and phosphorus not over 0.007; with the following other properties: maximum yield point of 155 MPa; maximum tensile strength of 350 MPa; surface finish free from pits, scratches, rust, slivers and laminations; having undergone L-treatment comprising hot-dipped zinc-iron annealed coated steel treated with a highly lubricative film (with coating weights of 0.01 g/m^2 to 0.05 g/m^2) containing manganese and phosphorus;

(ccxcv) prepainted hot-dipped galvanized flat-rolled steel products, designated as A-692 and entered in an aggregate annual quantity not to exceed 3,000 t, the foregoing having thickness of 0.490 mm or more but not over 0.520 mm; width of 762.0 mm or more but not over 850.9 mm; hardness HRB 54 to HRB 60; yield strength 260 MPa to 300 MPa; tensile strength 360 MPa to 390 MPa; elongation in 50 mm of 37 percent to 41 percent; having the following chemical composition (percent by weight): carbon 0.026 to 0.050, silicon not over 0.023, manganese 0.20 percent to 0.29, phosphorus not over 0.017, sulfur not over 0.013, aluminum less than 0.05, copper not over 0.03, nickel not over 0.03, chromium not over 0.06; zero spangled surface; edge camber (in each 10,000 mm of length) not over 3 mm arc height; flatness not over 5 mm (in each 600 mm to 1,250 mm of length); in-line temper-passed and tension-leveled, with application of highly workable polyester paint after galvanizing, with high gloss of 75 percent plus or minus 5 percent, which paint shows no visible cracking after 1T bending test according to ASTM D4145;

(ccxcvi) electrolytically plated or coated flat-rolled steel products of other alloy steel, designated as A-694, with a coating of either pure zinc or zinc nickel meeting the following characteristics: thickness 0.6 mm or more but not over 1.75 mm, thickness tolerances 0.05 mm; width 240 mm or more but not over 1,219 mm; with coating thickness tolerances not in excess of 6 g/m^2 per side; with a surface chemical treatment that is completely chromate-free deposited from an aqueous dispersion containing thiocarbonyl group compounds, phosphate ions and silica such that, when subjected to salt spray conditions for 72 hours in accordance with the testing method prescribed by JIS Z2371, the electrogalvanized steel sheet having a rusted surface area ratio of 5 percent or less; electrical conductivity of the electrogalvanized steel sheet having an interlaminar resistance value of 5 ohms per square centimeter or less, as measured by JIS C2550;

(ccxcvii) electrogalvanized, high-strength, low alloy steel products, in coils per ASTM A568, designated as A-667 or A-701 and entered in an aggregate annual quantity not to exceed 2,260 t; the foregoing having a width of 762 mm or more but not over 1730 mm; electrogalvanized coating on both sides of 52 g/m^2 or more but not over 65 g/m^2; oiled; thickness of 2.06 mm or greater; having the following chemical composition (percent by weight): carbon not over 0.15, sulfur not over 0.25, copper not over 0.20, nickel not over 0.20, chromium not over 0.15 and molybdenum not over 0.06; minimum yield strength 260 MPa; minimum tensile strength 450 MPa;

(ccxcviii) battery quality nickel/cobalt plated, diffusion-annealed cold-rolled flat-rolled steel products, designated as A-782, the foregoing with a cold-rolled substrate conforming to AISI 1006 chemistry; thickness 0.203 mm; thickness tolerance +/- 0.010 mm; having the top-side electrolytically plated with natural nickel and then natural cobalt and the reverse side plated with natural nickel, then annealed to create a diffused layer between the nickel/cobalt and steel substrate; having a coating thickness on the top side of 1.25 micrometers or more, reverse side 1.875 micrometers or more, adherent to the substrate to permit a 1T bend in accordance with ASTM E290 without cracking, flaking, peeling or any other evidence of separation;

(ccxcix) flat-rolled steel products, in coils, designated as A-807, having a width not over 150 mm; flash plated with copper on both sides and then coated on one side with a layer of sintered bronze powder, which layer is then coated with a second layer consisting of a plastic compound primarily containing polytetrafluoroethylene ("PTFE"); steel base with the following physical characteristics: tensile strength of 270 N/mm^2 or more, elongation 25 percent or more, hardness of HV 95 to130; flash plated on both sides with copper to a thickness of 2.6 to 3.4 micrometers; sintered bronze layer containing by weight 9 to12 percent tin, 88 to 91 percent copper and not over 0.3 percent other elements; outer-coated layer of a compound containing 65 percent minimum by weight PTFE and a maximum of 35 percent by weight other chemicals; total thickness 0.48 mm to 2.0 mm and width 4 mm to 150 mm;

(ccc) double-reduced tin mill flat-rolled products, designated as A-674; the foregoing meeting ASTMA623, A623M, A626, or A626M; having thickness 0.171 mm to 0.227 mm; width 800.1 mm to 908.1 mm; electrolytically plated with tin, with coating weight from 0.56 g/m^2 to 2.8 g/m^2 per side; continuously annealed; type L chemistry; oiled with acetyltributyl citrate (ATBC), meeting either of the following sets of properties:

(i) yield strength from 520 MPa to 580 MPa; minimum elongation of 5 percent; or

(ii) yield strength from 620 MPa to 680 MPa; minimum elongation of 3 percent;

(ccci) hot-rolled alloy steel sections, designated as A-621, having the following chemical composition (percent by weight): carbon 0.52 to 0.59, silicon 0.25 to 0.40, manganese 0.65 to 0.85, sulfur 0.030 maximum, phosphorus 0.030 maximum, chromium 0.60 to 0.80, molybdenum 0.10 maximum and vanadium 0.09 maximum; spheroidized annealed (80 percent minimum), decarburization 0.20 mm maximum, hardness HRB 99 maximum, shot blasted finish, in random lengths of 3 to 5 m; with the following cross sections:

(i) equal taper sections with width not greater than 35.00 mm and thickness not greater than 6.35 mm tapering to 1.60 mm maximum;

(ii) equal taper sections with width not greater than 95.00 mm and thickness not greater than 12.00 mm tapering to 4.00 mm maximum;

(iii) single bevel sections with width not greater than 36.00 mm and thickness not greater than 4.00 mm tapering to 1.25 mm with a single bevel no longer than 13.00 mm;

(iv) bevel sections with width not greater than 36.00 mm and thickness not greater than 5.00 mm tapering to 1.79 mm with a single bevel no longer than 26.00 mm; or

(v) bevel section with width not greater than 65.00 mm and thickness not greater than 7.00 mm tapering to 2.40 mm with a single bevel no longer than 26.00 mm;

(cccii) steel bar in rectangular section, designated as A-630, not further worked than hot rolled, 45 mm in width and 32 mm in thickness plus or minus 1.5 mm; extra straight, certified by the importer to have the following characteristics: steel grade St 52-3, with restricted chemical composition (percent by weight) : aluminum 0.020 to 0.050, nitrogen 0.009 maximum, total residual elements 0.15 maximum, certified by the importer as having a minimum reduction ratio of 102.3 having been hot rolled from a direct cast bloom;

(ccciii) steel bars, designated as A-650, not further worked than hot-rolled, grade SAE8620 alloy steel, with a maximum copper content of 0.05 percent by weight, in flat rectangular profile with sharp corners, with sectional dimensions ranging from 5 mm to 41.3 mm thick, and from 76.97 mm to 242.1 mm wide, with dimensional tolerance of plus and minus 1.5 mm;

(ccciv) hot-rolled bars, designated as A-693; having thickness from 10 mm to 19 mm, width from 98 mm to 150 mm; having the following chemical composition (percent by weight): carbon 0.28 to 0.33, manganese 0.45 to 0.65, silicon 0.55 to 0.75, phosphorus not over 0.025, sulfur not over 0.025, chromium 1.00 to 1.24, molybdenum 0.40 to 0.60, vanadium 0.20 to 0.30, nickel not over 0.25 and copper not over 0.25; spheroidize annealed, descaled; hardness of 86 to 96 HRB; grain size ASTM 4.5 or finer with occasional grains as large as 3 permissible, as determined using ASTM E112; decarburization (sub and partial)determined using ASTM E1077; aircraft quality conforming to AMS 2301 and free from injurious imperfections such as laminating, segregation and surface defects; produced by basic oxygen or electric furnace process, killed, treated with rare earths or calcium-silicon; flatness: for up to 12.7 mm thick, less than 6.35 mm in 3048 mm; for 12.7 mm to15.9 mm thick, less than 12.7 mm in 3658 mm; or for 15.9 mm to 25.4 mm thick, less than 25.4 mm in 3048 mm;

(cccv) hot-rolled bars, designated as A-708, the foregoing of SAE Grade 1095; having the following chemical composition (percent by weight): carbon 0.90 to 1.030, manganese 0.30 to 0.50, silicon 0.15 to 0.30, phosphorus not greater than0.04, sulfur not greater than 0.05, nickel not greater than 0.25 and chromium not greater than 0.20; no more than 0.4572 mm depth of surface decarburization; meeting one of the following sets of dimensions:

(i) half round cross section, width from 39.9 mm to 40.6 mm, thickness from 11.3 mm to 11.8 mm, and radius of 24.5 mm to 24.8 mm; length from 189.23 cm to 290.83cm;

(ii) square cross section, sides 15.7 mm to 16.3 mm, length from 228.91 cm to 304.49 cm; or

(iii) triangular cross section, sides 20.6 mm to 20.9 mm, length from 198.75 cm to 263.53 cm;

(cccvi) hot-rolled bars, designated as A-708; the foregoing of SAE Grade 1045; having the following chemical composition (percent by weight): carbon 0.43 to 0.50, manganese 0.60 to 0.90, silicon 0.15 to 0.30, phosphorus not greater than 0.04, sulfur not greater than 0.05, nickel not greater than 0.25 and chromium not greater than 0.20; no more than 0.4572 mm depth of decarburization; width 33.7 mm to 44.7 mm, thickness 6.9 mm to 9.0 mm, length from 194.94 cm to 307.98 cm;

(cccvii) hot-rolled steel handrail shapes, designated as A-712; the foregoing roll formed, grade C1010 ASTMA29; having the following chemical composition (percent by weight): carbon not greater than 0.19, manganese 0.300 to 1.500, phosphorus not greater than 0.050, sulfur not greater than 0.050 and silicon not greater than 0.600; yield strength not less than 235 N/mm^2, tensile strength 340 to 470 N/mm^2, elongation 26 percent minimum; in one of the following shapes:

(i) between 46 mm and 55 mm wide, a flat bottom, weight between 4.22 kg/m and 5.16 kg/m, length between 5.49 m and 6.71 m, top of profile having a concave radius of between 11.5 mm and 12.5 mm, with a convex radius between 24.5 mm and 25.5 mm on each side; edges having a radius between 4.0 mm and 5.0 mm, with a total depth of between 10 mm and 20 mm;

(ii) between 44 mm and 54 mm wide, a channel opening on underside of between 28 mm and 38 mm wide, a weight between 3.015 kg/m and 3.685 kg/m, length between 5.80 m and 6.41 m, top of profile having a concave radius between 11 mm and 21 mm, into a convex radius on each top side radius between 17 mm and 27 mm; total depth 14 mm to 24 mm; edge concave radius between 3 mm and 8 mm into a convex radius between 4 mm and 14 mm;

(iii) between 50 mm and 60 mm wide, a channel opening on underside between 35 mm and 45 mm wide, a weight between 3.55 kg/m and 4.33 kg/m, length between 5.49 m and 6.71 m, top of profile having a concave radius between 61 mm and 71 mm, edge radius between 2 mm and 12 mm, a total depth of 13 mm and 23 mm; or

(iv) between 52 mm and 62 mm wide, a channel opening on underside of between 30 mm to 50 mm wide, a weight between 2.86 kg/m and 3.50 kg/m, length between 5.80 m and 6.71 m, top of profile having a concave radius between 16 mm and 26 mm, into a convex radius on each topside with a radius between 10 mm and 20 mm, edge radius concave between 2 mm and 7 mm, into a convex radius between 3 mm and 13 mm;

(cccviii) bars and rods of alloy steel, not further worked than hot-rolled, designated as A-717; the foregoing of rectangular cross section, 330 mm (plus or minus 3 mm) wide and between 19 mm and 41 mm (plus or minus 1.5 mm) high, with height-to-width ratio of between 6/100 and 12/100, mass from 45.5 kg/m to 102.5 kg/m (plus or minus 2 kg/m); tapered at an angle of 22.5 degrees (plus or minus 1degree) on each of two symmetrical corners of the rectangular cross-section, thereby having one scraping/cutting edge on each side of the rectangle; having the following chemical composition (percent by weight): carbon 0.28 to 0.32, manganese 1.1 to 1.3, sulfur not greater than 0.025, phosphorus not greater than 0.025 and boron 0.001 to 0.003;

(cccix) bars and rods of alloy steel, not further worked than hot-rolled, designated as A-717; the foregoing of rectangular cross section, width 120 mm and 152.4 mm (plus or minus 3 mm), thicknesses 15 mm to 20 mm (plus or minus 1.5 mm), with height-to-width ratio of between 10/100 and 13/100, mass from12.2 kg/m 21 kg/m (plus or minus 2 kg/m); tapered at an angle of 25 degrees (plus or minus 1degree) on each of two symmetrical corners of the rectangular cross-section, thereby having one scraping/cutting edge on each side of the rectangle; having the following chemical composition (percent by weight): carbon 0.28 to 0.32, manganese 1.1 to 1.3, sulfur not greater than 0.025, phosphorus not greater than 0.025 and boron 0.001 to 0.003;

(cccx) bars and rods of alloy steel, not further worked than hot-rolled, designated as A-717; the foregoing of rectangular cross section, in widths of 110mm and 150 mm (plus or minus 3 mm), thickness 12 mm to 25 mm (plus or minus 1.5 mm), with height-to-width ratio between 11/100 and 17/100, mass 9.6 k/m to 27.6 kg/m (plus or minus 2 kg/m); tapered at an angle between 21 degrees and 26.5 degrees (plus or minus 1degree) on one corner of the rectangular cross-section, thereby having a scraping/cutting edge on one side of the rectangle; having the following chemical composition (percent by weight): carbon 0.28 to 0.32; manganese 1.1 to 1.3, sulfur not greater than 0.025, phosphorus not greater than 0.025 and boron 0.001 to 0.003;

(cccxi) bars and rods of alloy steel, not further worked than hot-rolled; of rectangular cross section, 406 mm wide (plus or minus 3 mm) and between 22 mm and 41 mm high (plus or minus 1.5 mm), with height-to-width ratio of between 5/100 and 10/100, mass 65.3 kg/m to 125.8 kg/m (plus or minus 2 kg/m); tapered at an angle of 22.5 degrees (plus or minus 1degree) on each of two symmetrical corners of the rectangular cross-section, thereby having one scraping/cutting edge on each side of the rectangle; having the following chemical composition (percent by weight): carbon 0.28 to 0.32; manganese 1.1 to 1.3; sulfur not over 0.025; phosphorus not over 0.025 and boron 0.001 to 0.003; the foregoing designated as A-717;.

(cccxii) bars and rods of alloy steel, not further worked than hot-rolled; of rectangular cross section, 330 mm wide (plus or minus 3 mm) and between 19 mm and 41 mm high (plus or minus 1.5 mm), with height-to-width ratio of between 6/100 and 12/100, mass 45.5 kg/m to 102.5 kg/m (plus or minus 2 kg/m); tapered at an angle of 22.5 degrees (plus or minus

1degree) on each of two symmetrical corners of the rectangular cross-section, thereby having one scraping/cutting edge on each side of the rectangle; having the following chemical composition (percent by weight): carbon 0.32 to 0.37, manganese 1.1 to 1.45, sulfur not greater than 0.025, phosphorus not greater than 0.025, boron 0.001 to 0.003; the foregoing designated as A-717;

(cccxiii) bars and rods of alloy steel, not further worked than hot-rolled; of rectangular cross section, 330 mm wide (plus or minus 3 mm) and between 19 mm and 41 mm high (plus or minus 1.5 mm), with height-to-width ratio of between 6/100 and 12/100, mass 45.5 kg/m to 102.5 kg/m (plus or minus 2 kg/m); tapered at an angle of 22.5 degrees (plus or minus 1degree) on each of two symmetrical corners of the rectangular cross-section, thereby having one scraping/cutting edge on each side of the rectangle; having the following chemical composition (percent by weight): carbon 0.17 to 0.23 percent, manganese 1.1 to1.3, sulfur not greater than 0.02, phosphorus not greater than 0.02 and boron 0.001 to 0.004; the foregoing designated as A-717;

(cccxiv) bars and rods of alloy steel, not further worked than hot-rolled; of rectangular cross section, 330 mm wide (plus or minus 3 mm) and between 19 mm and 41 mm high (plus or minus 1.5 mm), with height-to-width ratio of between 6/100 and 12/100, mass 45.5 kg/m to 102.5 kg/m (plus or minus 2 kg/m); tapered at an angle of 22.5 degrees (plus or minus 1degree) on each of two symmetrical corners of the rectangular cross-section, thereby having one scraping/cutting edge on each side of the rectangle; having the following chemical composition (percent by weight): carbon 0.19 to 0.24, manganese 1.25 to 1.45; sulfur not greater than 0.025, phosphorus not greater than 0.025 and boron 0.001 to 0.003; the foregoing designated as A-717;

(cccxv) bars and rods of alloy steel, not further worked than hot-rolled; of rectangular cross section, 330 mm wide (plus or minus 3 mm) and between 19 mm and 41 mm high (plus or minus 1.5 mm), with height-to-width ratio of between 6/100 and 12/100, mass 45.5 kg/m to 102.5 kg/m (plus or minus 2 kg/m); tapered at an angle of 22.5 degrees (plus or minus 1degree) on each of two symmetrical corners of the rectangular cross-section, thereby having one scraping/cutting edge on each side of the rectangle; having the following chemical composition (percent by weight): carbon 0.72 to 0.78, manganese 0.75 to 0.95, sulfur not greater than 0.025 and phosphorus not greater than 0.025; the foregoing designated as A-717;

(cccxvi) bars and rods of alloy steel, not further worked than hot-rolled; of rectangular cross section, 330 mm wide (plus or minus 3 mm) and between 19 mm and 41 mm high (plus or minus 1.5 mm), with height-to-width ratio of between 6/100 and 12/100, mass 45.5 kg/m to 102.5 kg/m (plus or minus 2 kg/m); tapered at an angle of 22.5 degrees (plus or minus 1degree) on each of two symmetrical corners of the rectangular cross-section, thereby having one scraping/cutting edge on each side of the rectangle; having the following chemical composition (percent by weight): carbon 0.30 to 0.34, manganese 1.00 to 1.15; sulfur not greater than 0.025, phosphorus not greater than 0.03 and boron 0.001 to 0.003; the foregoing designated as A-717;

(cccxvii) bars and rods of alloy steel, not further worked than hot-rolled; of rectangular cross section, 406 mm wide (plus or minus 3 mm) and between 22 mm and 41 mm high (plus or minus 1.5 mm), with height-to-width ratio of between 5/100 and 10/100, mass 65.3 kg/m to 125.8 kg/m (plus or minus 2 kg/m); tapered at an angle of 22.5 degrees (plus or minus 1degree) on each of two symmetrical corners of the rectangular cross-section, thereby having one scraping/cutting edge on each side of the rectangle; having the following chemical composition (percent by weight): carbon 0.32 to 0.37, manganese 1.1 to 1.45, sulfur not greater than 0.025, phosphorus not greater than 0.025 and boron 0.001 to 0.003; the foregoing designated as A-717;

(cccxviii) bars and rods of alloy steel, not further worked than hot-rolled; of rectangular cross section, 406 mm wide (plus or minus 3 mm) and between 22 mm and 41 mm high (plus or minus 1.5 mm), with height-to-width ratio of between 5/100 and 10/100, mass 65.3 kg/m to 125.8 kg/m (plus or minus 2 kg/m); tapered at an angle of 22.5 degrees (plus or minus 1degree) on each of two symmetrical corners of the rectangular cross-section, thereby having one scraping/cutting edge on each side of the rectangle; having the following chemical composition (percent by weight): carbon 0.17 to 0.23, manganese 1.1 to 1.3, sulfur not greater than 0.02, phosphorus not greater than 0.02, boron 0.001 to 0.004; the foregoing designated as A-717;.

(cccxix) bars and rods of alloy steel, not further worked than hot-rolled; of rectangular cross section, 406 mm widen (plus or minus 3 mm) and between 22 mm and 41 mm high (plus or minus 1.5 mm), with height-to-width ratio of between 5/100 and 10/100, mass 65.3 kg/m to 125.8 kg/m (plus or minus 2 kg/m); tapered at an angle of 22.5 degrees on each of two symmetrical corners of the rectangular cross-section, thereby having one scraping/cutting edge on each side of the rectangle; having the following chemical composition (percent by weight): carbon 0.19 to 0.24, manganese 1.25 to 1.45, sulfur not greater than 0.025, phosphorus not greater than 0.025 and boron 0.001 to 0.003; the foregoing designated as A-717;

(cccxx) bars and rods of alloy steel, not further worked than hot-rolled; of rectangular cross section, 406 mm wide (plus or minus 3 mm) and between 22 mm and 41 mm high (plus or minus 1.5 mm), with height-to-width ratio of between 5/100 and 10/100, mass 65.3 kg/m to 125.8 kg/m (plus or minus 2 kg/m); tapered at an angle of 22.5 degrees (plus or minus 1degree) on each of two symmetrical corners of the rectangular cross-section, thereby having one scraping/cutting edge on each side of the rectangle; having the following chemical composition (percent by weight): carbon 0.72 to 0.78, manganese 0.75 to 0.95, sulfur not greater than 0.025 and phosphorus not greater than 0.025; the foregoing designated as A-717;

(cccxxi) bars and rods of alloy steel, not further worked than hot-rolled; of rectangular cross section, 406 mm wide (plus or minus 3 mm) and between 22 mm and 41 mm high (plus or minus 1.5 mm), with height-to-width ratio of between 5/100 and 10/100, mass 65.3 kg/m to 125.8 kg/m (plus or minus 2 kg/m); tapered at an angle of 22.5 degrees (plus or minus 1degree) on each of two symmetrical corners of the rectangular cross-section, thereby having one scraping/cutting edge on each side of the rectangle; having the following chemical composition (percent by weight): carbon 0.30 to 0.34, manganese 1.00 to 1.15, sulfur not greater than 0.025, phosphorus not greater than 0.03 and boron 0.001 to 0.003; the foregoing designated as A-717;

(cccxxii) hollow drill bars and rods of circular cross section, external diameter not less than 19.03 mm nor greater than 25.35 mm, internal diameter not less than 6.0 mm not more than 7.6 mm; having the following chemical composition (percent by weight): carbon 0.04 to1.01, silicon 0.18 to 0.30, manganese 0.20 to 0.35, sulfur 0.009 to 0.020, phosphorus not over 0.025, nickel not over 0.020, chromium 0.91 to 1.19 and molybdenum 0.16 to 0.28; the foregoing designated as A-726;

(cccxxiii) hollow drill bars and rods of circular cross section, external diameter not less than 19.03 mm not greater than 25.35 mm, internal diameter not less than 6.0 mm nor greater than 7.6 mm; having the following chemical composition (percent by weight): carbon 0.40 to 0.43, silicon 1.40 to1.60, manganese 0.80 to 0.95, sulfur 0.010 to 0.020, phosphorus not over 0.025, nickel 0.40 to 0.50, chromium 0.60 to 0.80 and molybdenum 0.18 to 0.28; the foregoing designated as A-726;

(cccxxiv) hollow drill bars and rods of circular or hexagonal cross section, with an external dimension not less than 22.17 mm and not greater than 60.0 mm, and an internal dimension not less than 6.7 mm nor more than 22.6 mm; having the following chemical composition (percent by weight): carbon 0.19 to 0.24, silicon 0.20 to 0.35, manganese 0.55 to 0.75, sulfur 0.010 to 0.025, phosphorus not over 0.020, nickel 2.80 to 3.10, chromium 1.20 to 1.40 and molybdenum 0.20 to 0.26; the foregoing designated as A-726;

(cccxxv) hollow drill bars and rods of circular or hexagonal cross section, with an external dimension not less than 22.17 mm not more than 60.0 mm, and an internal dimension not less than 6.7 mm not more than 22.6 mm; having the following chemical composition (percent by weight): carbon 0.23 to 0.25, silicon 0.20 to 0.35, manganese 0.40 to 0.60, sulfur 0.010 to 0.025, phosphorus not over 0.020, nickel not over 0.25, chromium 3.00 to 3.50 and molybdenum 0.45 to 0.60; the foregoing designated as A-726;

(cccxxvi) hot-rolled or forged plastic mold steel round bars, having the following chemical composition (percent by weight): carbon 0.08 to 0.18, silicon 0.30 to 0.60, manganese 1.20 to 1.80, phosphorus 0.03 maximum, sulfur 0.30 maximum, chromium 0.20 to1.50, copper 0.50 maximum, nickel 3.00 to 5.00, molybdenum 0.50 maximum, vanadium 0.50 maximum and aluminum 0.80 to 2.00; displaying the following mechanical properties: hardness HRc 37 to 41, tensile strength 1,150 to 1,300 MPa, yield strength 830 to 950 MPa, reduction of area 35 to 55 percent, elongation 10 to 30 percent at room temperature; with Charpy-notch impact value of 54 N m/cm2 =25 ~ 50J, 2 mm U notch; displaying the following physical properties: coefficient of thermal expansion (plus or minus 10 percent): 7.30 $x10^{-6}$ $°C^{-1}$ for 25°C to 50°C, 9.10 $x10^{-6}$ $°C^{-1}$ for 25°C to 100°C, 11.12 $x10^{-6}$ $°C^{-1}$ for 25°C to 200°C, 12.54 $x10^{-6}$ $°C^{-1}$ for 25°C to 300°C, and 13.57 $x10^{-6}$ $°C^{-1}$ for 25°C to 400°C; coefficient of thermal conductivity at 100°C of 24.14 ±10% or at 200°C of 25.3 ±10% kcal/(m hr°C); the foregoing designated as A-728;

(cccxxvii) galvanized, cold formed, steel channels; surface finish: smooth in-line galvanized zinc coating with mass of 100 g/m^2 minimum, applied after forming with the zinc coating further passivated to resist white rust; not further cold worked, not manufactured from pre-galvanized strip; length 3.048 m to 12.192 m; channel sizes: 230 x 75 mm, 200 x 75 mm, 180 x 75 mm, 150 x 75 mm, 125 x 65 mm, 100 x 50 mm, 75 x 40 mm with thicknesses of 4.0 and 5.0 or 6.0 mm and minium yield strength 450 MPa and 300 x 90 mm with thicknesses of 7.0 mm or 8.0 mm and a minimum yield strength of 400 MPa; tolerances: squareness (angular tolerance) the included angle between the sides of a channel shall be 90 degrees, the maximum out-of-squareness of a channel shall be in accordance with the following: where the shorter leg length is not more than 50.8 mm, ± 2.0 degrees, where the shorter leg length is greater than 50.8 mm but not more than 76.2 mm, ± 1.5 degrees, where the shorter leg length is greater than 76.2 mm, ± 1.0 degree; twist: maximum angle of twist is 1 degree over 1 meter; feedstock fully killed, continuously cast steel, fine grain; maximum content of specified elements (percent by weight): carbon 0.20, manganese 1.60, silicon 0.10, aluminum 0.10, phosphorus 0.040 and sulfur

0.030, carbon equivalent of no more than 0.39; all channels produced from flat product (strip) having a uniform cross section (wall thickness); the foregoing designated as A-751;

(cccxxviii) alloy steel, forged or rolled, black or bright bars, not further worked than forged, rolled or forged; diameters from 12 mm to 25 mm, lengths not more than 11 m; having the following chemical composition (percent by weight): carbon 0.28 to 0.36, silicon not more than 0.35, manganese 0.35 to 0.45, phosphorus not more than 0.035, sulfur not more than 0.015, chromium 0.75 to 0.95; molybdenum 0.55 to 0.75, nickel 3.20 to 3.50 and vanadium 0.15 to 0.20; the foregoing designated as A-774;

(cccxxix) free machining steel flat bars, not further worked than hot-rolled; designated as A-779; in coils weighing not less than 1100 kg (2500 lb.)each; SAE 1215; physical dimensions (in cross-section): 33.5 mm (plus or minus 0.50 mm) by 24.0 mm (plus or minus 0.30 mm); secondary grain size of ASTM 5 and finer; free from surface defects deeper than 2 percent of diameter or 0.305 mm (which ever is greater); containing not more than350 particles per square centimeter of oxide inclusions of with a diameter greater than 1 micrometer; having the following chemical composition (percent by weight): copper not greater than 0.15, chromium not greater than 0.10 and nickel not greater than 0.15; certified by importer as: continuously cast, BOF steel; coarse-grain practice with aluminum content no more than 0.006 percent by weight; reduction ratio 8 or more, and free from mixes as determined by 100 percent spectrometer testing;

(cccxxx) special bar quality steel bars, hot rolled, square profile, designated as A-630 and entered in an aggregate annual quantity not to exceed 200 t, the foregoing not further worked than hot rolled, in sizes from 58.7 mm across flats up to and including 103.2 mm across flats, with a tolerance of minus 1.0 mm and plus 2.0 mm applied to each across flats dimension, having sharp corners defined as having corner radii not over 1.5 mm on sizes between 58.7 mm and 97 mm and not over 2.0 mm on sizes over 97 mm, in other-alloy steel grades, suitable for cold drawing into cold finished squares with sharp corners;

(cccxxxi) hot-worked non-alloy steel bars, designated as A-630 and entered in an aggregate annual quantity not to exceed 50 t, the foregoing not further worked than hot rolled, in steel grade ASTM A752 GR50 type 2, in a special bar shape of rectangular type cross section with overall width 89.0 mm and of thickness 22.0 mm, with two side faces at 90 degrees to the long faces, one long face having an indent at each end described as 8.25 mm wide by 11.0 mm deep with side face angles inclined at 5 degrees, with a tolerance of plus and minus 1.5 mm applied to cross sectional dimensions, and a tolerance of plus and minus 2 degrees applied to all angular degrees; the special shape having 6 external corners and 2 internal corners;

(cccxxxii) hot-rolled steel bars of rectangular section, designated as A-630 and entered in an aggregate annual quantity not to exceed 80 t, the foregoing not further worked than hot rolled, 45 mm wide and 45 mm thick, with a plus and minus tolerance of 1.5 mm applied to width and thickness dimensions, extra straight, in steel grade St 52-3, with a restricted chemical composition (percent by weight): aluminum 0.020 to 0.050, nitrogen 0.009 and total residual elements 0.15 maximum; with a minimum reduction ratio of 48.7 having been hot re-rolled from a direct cast bloom;

(cccxxxiii) hot-rolled steel bars of rectangular section, designated as A-630 and entered in an aggregate annual quantity not to exceed 100 t, the foregoing not further than hot rolled, 55 mm in width and 55 mm in thickness, with a plus and minus tolerance of 1.5 mm applied to width and thickness dimensions, extra straight, in steel grade St 52-3, with a restricted chemical composition (percent by weight): aluminum 0.020 to 0.050, nitrogen 0.009 maximum and total residual elements 0.15 maximum; with a minimum reduction ratio of 72.7 having been hot re-rolled from a direct cast bloom;

(cccxxxiv) free-cutting steel bars of rectangular section, designated as A-630 and entered in an aggregate annual quantity not to exceed 9 t, the foregoing not further worked than hot-rolled; thickness 26.19 mm; width 29.37 mm; with a plus and minus tolerance of 1.5 mm applied to width and thickness dimensions; with sharp corners; in steel grade AISI C1215; suitable for cold drawing;

(cccxxxv) carbon steel bars, designated as A-630 and entered in an aggregate annual quantity not to exceed 5 t, the foregoing of rectangular section, not further worked than hot rolled; thickness 19.84 mm; width 30.16 mm; with a plus and minus tolerance of 1.5 mm applied to the width and thickness dimensions; with sharp corners; in steel grade AISI C1018; suitable for cold drawing;

(cccxxxvi) special bar quality steel bars, designated as A-631 and entered in an aggregate annual quantity not to exceed 200 t, the foregoing in square profile; not further worked than hot rolled; in sizes from 58.7 mm across flats up to and including 103.2 mm across flats, with a tolerance of minus 1.0 mm and plus 2.0 mm applied to each across flats dimension; having sharp corners defined as having corner radii not over 1.5 mm on sizes between

58.7 mm and 97 mm and not over 2.0 mm on sizes over 97 mm; in 1200 series free-cutting steel grades; suitable for cold drawing into cold finished squares with sharp corners;

(cccxxxvii) bars, designated as A-635, the foregoing not further worked than hot rolled; of grade SAE 5120 alloy steel; in flat rectangular profile; with sectional dimensions ranging from 12.12 mm to 20.07 mm in thickness and 153 mm to 257.18 mm width; with sharp corners; with a tolerance of plus and minus 1.5 mm applied to width and thickness dimensions;

(cccxxxviii) bright finish hot-rolled, annealed, turned and polished steel bars, designated as A-642 and entered in an aggregate annual quantity not to exceed 325 t, the foregoing meeting the following characteristics: diameters of 75 and 80 mm in 5.5 to 7.5 meter lengths; having the following chemical composition (percent by weight): carbon 0.15 to 0.20, silicon not over 0.40, manganese 1.00 to 1.30, phosphorus not over 0.025, sulfur 0.20 to 0.35; chromium 1.00 to 1.30; molybdenum not over 0.05, nickel not over 0.15; aluminum 0.20 to 0.50; boron 0.001 to 0.003; copper not over 0.25, tin not over 0.025, titanium not over 0.005, calcium not over 0.003, antimony not over 0.005 and oxygen not over 0.0025; with the following other properties: surface finish free from pits, scratches, cracks, or seams; straight to within 1 mm per 1 m of length; grain size of 5 or finer according to American Standards for Testing Materials method A112 (ASTM A112); fracture toughness test (Fdyn) with a minimum of 49,000 N;

(cccxxxix) irregular sections of non-alloy steel, designated as A-661, the foregoing not further worked than hot-rolled, hot-drawn, or extruded; having the following chemical composition (percent by weight): carbon 0.24 to 0.28, manganese 1.20 to 1.40, silicon 0.15 to 0.30, aluminum 0.015 to 0.035, vanadium 0.06 to 0.10, phosphorus not over 0.025, sulfur not over 0.025, chromium not over 0.15 and nickel not over 0.15; yield strength of not less than 440 N/mm^2; tensile strength of not less 600 N/mm^2; elongation in 50 mm not less than 18 percent; physical dimensions of: two segments constituting one unitary and solid piece, respectively known as the base segment and the leg segment; cross section comprising an angle with the base segment horizontal and the leg segment joined vertically at 90 degrees to the upper right side of the base segment and with the height of the entire shape equaling the height of the base segment added to the height of the leg segment, totaling less than 80 mm; base segment having a height of 34.2 mm to 35.8 mm and width of 52.2 mm to 53.7 mm and the leg segment a height of 11.5 mm to 13.0 mm and width at the point it joins the base segment of 15 mm to 16 mm with one vertical side in line with the right side of the base segment and the other vertical side tapering away from the base segment at 20 degrees so that the width at the top of the leg segment is 11 mm to 12 mm; leg segment having 2 mm to 5 mm radius corners; base segment having a 7 mm to 9 mm by 7 mm to 9 mm chamfer on the lower right corner, a 7 mm to 9 mm high by 13 mm to 15 mm wide chamfer on the lower left side (diagonally from the leg segment) and a 6 mm to 7.5 mm by 6mm to 7.5 mm chamfer on the upper left corner; weighing 14.6 to 15.0 kg/m;

(cccxl) S-sections of non-alloy steel, designated as A-661, the foregoing not further worked than hot-rolled, hot-drawn, or extruded; having the following chemical composition (percent by weight): carbon 0.24 to 0.28, manganese 1.20 to 1.40, silicon 0.15 to 0.30, aluminum 0.015 to 0.035, vanadium 0.06 to 0.10, phosphorus not over 0.025, sulfur not over 0.025, chromium not over 0.15 and nickel not over 0.15; yield strength of not less than 440 N/mm^2; tensile strength of not less than 600 N/mm^2; elongation in 50 mm not less than 18 percent; with physical dimensions of: five segments joined at 90 degree angles to each other constituting one unitary and solid piece with a cross section view of an upright "S" with an overall height of 88.9 mm to 91.2 mm and width of 56.0 mm to 59.0 mm; having a top most horizontal segment 33.0 mm to 35.5 mm wide and an upper vertical segment 21.5 mm to 22.5 mm wide; middle horizontal segment 56.0 mm to 59.0 mm wide; lower vertical segment 13.0 mm to 14.0 mm wide and bottom horizontal segment 33.0 mm to 35.0 wide; with both the top and bottom horizontal segments having inside horizontal surfaces with 20-degree tapers to their ends; with an upper vertical segment with 7 mm to 9 mm by 7 mm to 9 mm chamfer on the upper left corner and a 9 mm to 11 mm high by 8 mm to 10 mm wide chamfer on the lower left corner; with the lower vertical segment having two outside 10.5 mm to 13.5 mm radii and two inside 4 mm to 6 mm radii; weighing 17.7 to 18.1 kg/m;

(cccxli) irregular sections of non-alloy steel, designated as A-661, the foregoing not further worked than hot-rolled, hot-drawn, or extruded; having the following chemical composition (percent by weight): carbon 0.09 to 0.13, manganese 1.25 to 1.45, silicon 0.40 to 0.50, aluminum 0.01 to 0.04, vanadium 0.04 to 0.06, phosphorus not over 0.02, sulfur not over 0.02, chromium not over 0.20 and nickel not over 0.15; yield strength of not less than 355 N/mm^2, tensile strength of between 490 and 630 N/mm^2, and elongation in 50 mm not less than 22 percent, with physical dimensions of: two segments constituting one unitary and solid piece, respectively known as the base segment and the leg segment; the cross section view is of an irregular shaped angle with the base segment horizontal and the leg segment joined vertically at 90 degrees to the upper right side of the base segment and with the height of the entire shape equaling the height of the base segment added to the height of the leg segment, totaling 62.7 mm to 64.3 mm; the base segment having a height of 34.7 mm to 35.1 mm and width of 46.1 mm to 46.9 mm including the 6.6 mm to 8.4 mm x 7.7 mm to 11.3 mm protrusion;

the leg segment having a height of 27.6 mm to 29.6 mm with one vertical side in line with the right side of the base segment and the other vertical side tapering away from the base segment at 14 to 16 degrees so that the width at the top of the leg segment is 4.7 mm to 7.1 mm at the point the 1.7 mm to 3.3 mm radius tip begins; the tapered leg meeting the base segment with a 5.9 mm to 6.9 mm inside radius; the base segment having a 19 mm wide x 30 degree chamfer on the lower right corner; weight 13.2 kg/m to 13.6 kg/m;

(cccxlii) irregular sections of non-alloy steel, designated as A-661, the foregoing not further worked than hot-rolled, hot-drawn, or extruded; having the following chemical composition (percent by weight): carbon 0.09 to.13, manganese 1.25 to 1.45, silicon 0.15 to 0.25, aluminum 0.01 to 0.04, vanadium 0.04 to 0.06, phosphorus not over 0.02, sulfur not over 0.02, chromium not over 0.20 and nickel not over 0.15; yield strength of not less than 355 N/mm^2, tensile strength of between 490 and 630 N/mm^2, and elongation in 50 mm not less than 22 percent, with physical dimensions of: two segments constituting one unitary and solid piece, respectively known as the base segment and the leg segment; the cross section view is of an irregular shaped angle with the base segment horizontal and the leg segment joined vertically at 90 degrees to the upper right side of the base segment and with the height of the entire shape equaling the height of the base segment added to the height of the leg segment, totaling 49.3 mm to 49.8 mm; the base segment having a height of 27.6 mm to 28.2 mm and width of 37.8 mm to 38.4 mm; the leg segment having a height of 21.0 mm to 22.1 mm with one vertical side in line with the right side of the base segment and the other vertical side tapering away from the base segment at 14 to 16 degrees so that the width at the top of the leg segment is 6.3 mm to 7.4 mm at the point the 2.2 mm to 3.8 mm radius tip begins; the tapered leg meeting the base segment with a 6.0 mm to 6.6 mm inside radius; the base segment having a 17.5 mm to 19.1 mm high x 50 degree chamfer on the lower right corner, a 8.3 mm to 9.9 mm high x 45 degree chamfer on the lower left corner, and a 11.6 mm to 13.7 mm high x 25 degree chamfer on the upper left corner offset in 3 mm from the left edge; the weight 7.7 kg/m to 8.1 kg/m;

(cccxliii) irregular sections of non-alloy steel, designated as A-661, the foregoing not further worked than hot-rolled, hot-drawn, or extruded; having the following chemical composition (percent by weight): carbon 0.09 to 0.13, manganese 1.25 to 1.45, silicon 0.15 to 0.25, aluminum 0.01 to 0.04, vanadium 0.04 to 0.06, phosphorus not over 0.02, sulfur not over 0.02, chromium not over 0.20 and nickel not over 0.15; yield strength of not less than 355 N/mm^2, tensile strength of between 490 and 630 N/mm^2,and elongation in 50 mm not less than 22 percent, with physical dimensions of: a vertical section with a height that ranges from 23.7 mm to 24.3 mm and width that ranges from 27.7 mm to 28.3 mm, joined at 90 degrees to the center of the top horizontal section that has a width that ranges from 57.1 mm to 58.9 mm and a height that ranges from 9.7 mm to 11.3 mm to produce a frontal view of a "T" with the height of the entire shape equaling the height of the vertical section added to the thickness of the top horizontal section, totaling 34.0 mm to 35.0 mm; the top horizontal section having three depressions, one centered on the top side of the "T" that is 13 mm to 15 mm wide and 1.7 mm to 2.3 mm deep with the different surfaces blended into each other with 4.7 mm to 5.3 mm radii and the other two depressions on the vertical section side, one on each side of the vertical section, each with a radius of 9.8 mm to 10.5 mm and a depth of 1.5 mm to 2.7 mm; weight 10.1 kg/m to 11.1 kg/m;

(cccxliv) irregular sections of non-alloy steel, designated as A-661, the foregoing not further worked than hot-rolled, hot-drawn, or extruded; having the following chemical composition (percent by weight): carbon 0.09 to 0.13, manganese 1.25 to 1.45, silicon 0.15 to 0.25, aluminum 0.01 to 0.04, vanadium 0.04 to 0.06, phosphorus not over 0.02, sulfur not over 0.02, chromium not over 0.20 and nickel not over 0.15; yield strength of not less than 355 N/mm^2, tensile strength of between 490 and 630 N/mm^2, and elongation in 50 mm not less than 22 percent, with physical dimensions of: two segments constituting one unitary and solid piece, respectively known as the base segment and the leg segment; the cross section view is of an angle with the base segment horizontal and the leg segment joined vertically at 90 degrees to the upper left side of the base segment and with the height of the entire shape equaling the height of the base segment added to the height of the leg segment, totaling 42.4 mm to 43.6 mm; the base segment having a height of 27.7 mm to 28.3 mm and width of 34.0 mm to 35.0 mm and the leg segment with a height of 14.7 mm to 15.3 mm and width of 9.7 mm to 11.3 mm with one vertical side in line with the left side of the base segment; the opposite vertical side having a depression with a radius of 9.9 mm to 10.5 mm and a depth of 1.5 mm to 2.7 mm; the base segment having an 18 mm to 21.5 mm high x 11.6 mm to 13.2 mm wide chamfer on the lower left side; the weight 7.4 kg/m to 8.0 kg/m;

(cccxlv) S-sections of non-alloy steel, designated as A-661, the foregoing not further worked than hot-rolled, hot-drawn, or extruded; having the following chemical composition (percent by weight): carbon 0.09 to 0.13, manganese 1.25 to 1.45, silicon 0.15 to 0.50, aluminum 0.01 to 0.04, vanadium 0.04 to 0.06, phosphorus not over 0.02, sulfur not over 0.02, chromium not over 0.20 and nickel not over 0.15; yield strength of not less than 355 N/mm^2, tensile strength of 490 N/mm^2 to 630 N/mm^2, and elongation in 50 mm not less than 22 percent, with physical dimensions of: five segments joined at 90 degree angles to each other constituting one unitary and solid piece with a cross section view of an upright "S" with an overall height of 74.2 mm to 77.3 mm and width of 50.0 mm to 52.0 mm; the top most horizontal segment 25.0 mm to 27.5 mm wide, the upper vertical segment 13.5 mm to 14.5 mm wide, the middle horizontal segment 50.0 mm to 52.0 mm wide, the lower vertical segment 15.0 mm to 16.0 mm wide, and the bottom horizontal segment 31.2 mm to 33.2 wide; the top horizontal segment having an inside horizontal surface with a 20-degree taper to its end and

the bottom horizontal segment having an inside horizontal surface with a 12-degree taper to its end; the upper vertical segment having a 5 mm maximum radius on the upper left corner and a 8.0 mm to 9.5 mm high x 8.0 mm to 9.5 mm wide chamfer on the lower left corner; the lower vertical segment having a 9.2 mm to 10.8 mm radius on the upper right hand corner; all remaining corners having 1.5 mm to 6.5 mm radii; weight 13.5 kg/m to 13.9 kg/m;

(cccxlvi) U - sections of non-alloy steel, designated as A-661, the foregoing not further worked than hot-rolled, hot-drawn, or extruded, with a chemical composition (percent by weight) of: carbon 0.15 to.20, manganese 0.60 to 0.90, silicon 0.15 to 0.35, phosphorus not over 0.04, sulfur not over 0.05; yield strength of not less than 275 N/mm^2, tensile strength not less than 450 N/mm^2, and elongation in 50 mm not less than 22 percent, with physical dimensions of: a center – bottom piece, of width of 45.3 mm to 48.9 mm and thickness of 13.5 mm to 14.5 mm, joined along the entire length of both long sides to horizontal pieces at a 90-degree angle; one side piece, of width of 13.5 mm to 14.5 mm and height of 27.5 mm to 28.5 mm, and the other side piece of width of 7.5 mm to 8.5 mm and height of 14.8 mm to 15.8 mm, protruding from the center-bottom piece in such a manner that the outside of each side piece is flush with the outside of the center-bottom piece to produce a frontal view of a squared-off "U" with the width of the entire shape equaling the width of the center-bottom piece; all inside and outside corners have a minimum 1 mm radius and maximum 5 mm radius;

(cccxlvii) half round cross section steel bars, SAE Grade 1095, designated as A-708; the foregoing with not more than 0.4572 mm depth of decarburization on surface of steel; width from 39.9 mm to 40.6 mm, thickness from 11.3 mm to 11.8 mm, radius 24.5 mm to 24.8 mm; length from 189.23 cm to 290.83 cm, having the following chemical composition (percent by weight): carbon 0.90 to 1.0, manganese 0.30 to 0.50, silicon 0.15 to 0.30, phosphorus not over 0.04, sulfur not over 0.05, nickel not over 0.25 and chromium not over 0.20;

(cccxlviii) hot-rolled steel bars, designated as A-765 and entered in an aggregate annual quantity not to exceed 325 t, the foregoing meeting the following characteristics: AISI C1055V, diameter not over 19.5 mm not less than 18.5 mm; length not over 161.5 mm not less than 159.0 mm; having the following chemical composition (percent by weight): carbon 0.53 to 0.58, silicon 0.15 to 0.35, manganese 0.70 to 0.90, phosphorus not over 0.030, sulfur not over 0.035, copper not over 0.25, nickel not over 0.20, chromium 0.07 to 0.20 and vanadium 0.100 to 0.150; grain size shall be more than 5.0 following measuring methods specified in JISG0552; hardness 20 to 26.5 on HRC scale; tensile strength not less than 834 MPa , yield strength not less than 539 MPa;

(cccxlix) bars of nonalloy steel in hard metric sizes, designated as A-609; the foregoing not further worked than cold-drawn; of rectangular cross section; thickness 6 mm or more but not over 50 mm; width 10 mm or more but not over 150 mm; length not over 6.5 m; having the following chemical composition (percent by weight): carbon not over 0.20, manganese not over 1.4, phosphorus and sulfur not over 0.045 and silicon not over 0.25; tensile strength 340 N/mm^2 to 470 N/mm^2, upper yield stress 235 N/mm^2 to 215 N/mm^2;

(cccl) cold finished nonalloy steel bars, of circular cross section, designated as A-611; the foregoing diameter not over 81 mm; surface hardened, precision ground; having the following chemical composition (percent by weight): carbon 0.50 to 0.57, silicon 0.15 to 0.35, manganese 0.40 to 0.70, phosphorus not over 0.025, sulfur not over 0.035 and aluminum 0.02 to 0.08; grain size of 6 or finer as per DIN 50601; hardness HV 670 to 840; surface finish maximum RMS 12; minimum hardness depth of 0.4 mm;

(cccli) machined alloy steel flat and square bars to specification AISI 8620 to ASTM A29 (A331), designated as A-621; the foregoing in thickness 88.9 mm or more but not over 152.4 mm,. width 127 mm or more but not over 304.8 mm; having the following chemical composition (percent by weight): carbon 0.18 to 0.23, manganese 0.70 to 0.90, silicon 0.15 to 0.35, sulfur 0.040 maximum, phosphorus 0.035 maximum, chromium of 0.40 to 0.60, molybdenum 0.15 to 0.25, nickel 0.40 to 0.70 and copper 0.350 maximum; length 3 m to 5 m;

(ccclii) E-4130 cold drawn aircraft quality bars, designated as A-621; the foregoing being square bars with sides up to16.00 mm and round bars up to16.00 mm diameter, according to MIL S -6758, AMS-S-6758, AMS-2301, ASTM-A-331, AMS-6348, AMS-2304 or AMS-6370, Condition D4, latest revisions; having the following chemical composition (percent by weight): carbon 0.28 to 0.33, silicon 0.15 to 0.35, manganese 0.40 to 0.60, sulfur 0.025 maximum, phosphorus 0.025 maximum, chromium 0.80 to 1.10, molybdenum 0.10 to 0.25, nickel 0.25 maximum, copper 0.35 maximum; heat treated; random lengths of 3 m to 4 m;

(ccccliii) cold finished AISI 4140 aircraft quality square steel bars, designated as A-621; the foregoing to MIL & AMS-S-5626, AMS 6382, 2301, 2304, ASTM-A-331,AMS 6349 except condition D, COND C-4, latest revisions; up to 32.00 mm square; having the following chemical composition (percent by weight): carbon 0.38 to 0.43, silicon 0.15 to 0.35, manganese 0.75 to 1.00, sulfur 0.025 maximum, phosphorus 0.025 maximum, chromium 0.80 to 1.10, molybdenum 0.10 to 0.25, nickel 0.25 maximum and copper 0.35 maximum; annealed; length 3,000 mm or more but not over 4,000 mm;

(ccccliv) cold drawn aircraft quality E4340 steel bars, designated as A-621, the foregoing to ASTM-A-331, AMS 6415, 6409, 2310, 2301, 2304, MIL &AMS-S-5000, trans specs: BMS 728, AMS 6484, DMS 1555Grade B, physical cond E, surface condition 4, latest revisions; having the following chemical composition (percent by weight): carbon 0.38 to 0.43, silicon 0.15 to 0.35, manganese 0.60 to 0.80, sulfur 0.025 maximum, phosphorus 0.025 maximum, chromium 0.70 to 0.90, molybdenum 0.10 to 0.25, nickel 1.65 to 2.00 and copper 0.35 maximum; normalized and sub-critically annealed; length 3 m to 4 m; the foregoing in one of the following cross sections:

(i) hexagonal, up to 16.00 mm across flats;

(ii) round, up to 16.00 mm diameter; or

(iii) square, up to 16.00 mm across flats;

(ccclv) unhardened cold drawn steel rounds (soft magnetic iron), designated as A-626, the foregoing with diameter 3 mm to 178 mm, in cut lengths; having the following chemical composition (percent by weight): carbon 0.15 to 0.27, silicon not over 0.05, manganese 0.12 to 0.22, phosphorus not over 0.012, sulfur not over 0.025 and chromium not over 0.05;

(ccclvi) leaded alloy steel bars, designated as A-627, the foregoing in grade C45Pb, DIN 1.0504; having the following chemical composition (percent by weight): carbon 0.40 to 0.50, silicon not over 0.40, manganese 0.050 to 0.085, sulfur 0.020 to 0.040 and lead 0.15 to 0.30; cold drawn, eddy current and ultrasonically tested at a level of Flat Bottom Hole (FBH) less than 0.7 mm (specific calibration of ultrasonic testing equipment to sort out defective bars); microscopic cleanliness testing according to DIN50602 and without macroscopic inclusion and lead segregations detrimental for high pressure applications; tensile strength 690 N/mm^2 to 900 N/mm^2; diameters up to 25.4 mm in random bar length, with mill test report according to DIN EN 10204/3.1B;

(ccclvii) flat bars of nonalloy freecutting steel, designated as A-630, the foregoing not further worked than cold drawn; according to ASTM A29/A108; meeting one of the following cross sections:

(i) thickness 26.16 mm or more but not over 48.26 mm, width 31.75 mm or more but not over 70.61 mm;

(ii) thickness 26.16 mm or more but not over 48.26 mm, width 166.1 mm or more but not over 374.6 mm;

(iii) thickness 15.88 mm or more but not over 19.81 mm, width 76.96 mm or more but not over 152.4 mm; or

(iv) thickness 51.56 mm or more but not over 76.2 mm, width 76.96 mm or more but not over 152.4 mm;

(ccclviii) cold finished flat bars, designated as A-630; the foregoing in grade C1018 according to ASTMA29/A108, containing by weight not over 0.25 percent carbon; thickness 6.35 mm or more but not over 76.2 mm, width 203.2 mm or more but not over 355.6 mm; produced from bloom cast material; low residual value (not over 0.15 percent by weight) and nitrogen not over 0.009 percent (by weight); with sharp corners size tolerance of 0.203 mm;

(ccclix) steel hexagonal bars, designated as A-630; the foregoing not further worked than cold finished, in sizes from 28.57 mm to 55.56 mm (inclusive), in grade C11L37 according to ASTM A29/A108, carbon content of 0.32 to 0.39 percent by weight;

(ccclx) cold finished near-square rectangular keyway sections, designated as A-630, the foregoing of grade C1045 according to ASTM A29/A108; containing by weight 0.43 to 0.50 percent carbon, size 50.72 mm x 57.07 mm;

(ccclxi) cold finished special sections, designated as A-630; the foregoing in grade C1018 according to ASTM A29/A108, containing by weight not over 0.25 percent carbon, 125.4 mm in width and 9.5 mm in thickness and four radius corners of 4.76 mm;

(ccclxii) cold finished alloy steel bars, designated as A-630; the foregoing in grade SAE 4140 according to ASTM A29/A108; containing by weight 0.38 to 0.43 percent carbon; in nonstandard cross sectional shape being a segment of a circle, described by a radius of length 49.12 mm or 41.63 mm and an inclusive angle of 45 degrees, a tolerance of plus and minus 1.0 mm being applied to all cross sectional dimensions, and plus and minus 2 degrees being applied to all angular degrees;

(ccclxiii) cold finished machined square bars, designated as A-630; the foregoing in grades C1018 and C1117 according to ASTM A29/A108 in sizes over 101.6 mm up to and including 160 mm, with sharp defined corners;

(ccclxiv) cold finished square bars, designated as A-630; the foregoing in grade C1117 according to ASTMA29/A108, containing by weight not over 0.25 percent carbon, with dimensions 76.2 mm or more but not over 101.6 mm;

(ccclxv) flat bars of non-alloy freecutting steel, designated as A-630; the foregoing not further worked than cold drawn, rectangular dimension of 20.64 mm thickness and 25.4 mm width according to ASTM A29/A108;

(ccclxvi) alloy steel bars, designated as A-675; the foregoing in grade 18CrNi8 / DIN 1.5920; having the following chemical composition (percent by weight): carbon 0.15 to 0.20, silicon: 0.10 to 0.30, manganese 0.40 to 0.60, sulfur 0.015 to 0.025, chromium 1.80 to 2.10, nickel 1.80 to 2.10 and copper not over 0.35; oxygen content 30 ppm maximum; annealed, cold drawn and polished, eddy current and ultrasonically tested at a level FBH less than 0.7, with a microscopic cleanliness less than K3 maximum 10 according to DIN 50602 and without macroscopic inclusion detrimental for high pressure application as injector nozzle holder, in diameters up to 25.4 mm, in random bar length, with mill test report according to DIN EN10204/3.1.B;

(ccclxvii) cold finished alloy steel round bars, designated as A-709; the foregoing in grade AMS 6304, annealed and ground; tensile strength not over 860 MPa; having the following chemical composition (percent by weight): carbon 0.40 to 0.50, manganese 0.40 to 0.70, silicon 0.15 to 0.35, phosphorus 0.025 maximum, sulfur 0.025 maximum, chromium 0.80 to 1.10, molybdenum 0.45 to 0.65, vanadium 0.25 to 0.35, nickel 0.25 maximum and copper 0.35 maximum; bar diameters from 6 mm to 27 mm, length 3 m 6 m;

(ccclxviii) cold finished alloy steel round bars, designated as A-709; the foregoing in grade SAE 4130, aerospace quality according to the requirements of AMS-S-6758 (formerly MIL-S-6758), hardened and tempered condition; tensile strength not less than 860 MPa, yield strength not less than 690 MPa, elongation not less than 17 percent of 50.8 mm gauge length, reduction of area not less than 55 percent; having the following chemical composition (percent by weight): carbon 0.28 to 0.33, manganese 0.40 to 0.60, silicon 0.15 to 0.35, phosphorus 0.025 maximum, sulfur 0.025 maximum, chromium 0.80 to 1.10, molybdenum 0.15 to 0.25, nickel 0.25 maximum and copper 0.35 maximum; bar diameter 6.3 mm to 25.4 mm, length 3 m to 6 m;

(ccclxix) cold finished alloy steel round bars, designated as A-709; the foregoing in grade SAE 4340, according to the requirements of AMS 6484, normalized and tempered condition having hardness not over 322 Brinell; having the following chemical composition (percent by weight): carbon 0.38 to 0.43, manganese 0.65 to 0.85, silicon 0.15 to 0.35, phosphorus 0.025 maximum, sulfur 0.025 maximum, chromium 0.70 to 0.90, nickel 1.65 to 2.00, molybdenum 0.20 to 0.30 and copper 0.35 maximum; bar diameter 7.9 mm to 25.4 mm, length 3 m to 6 m;

(ccclxx) cold finished alloy steel round bars, designated as A-709; the foregoing in grade SAE 4340H, annealed and cold drawn, with a structure of lamellar pearlite and partial spheroidization for good machinability; hardness not over 248 Brinell; having the following chemical composition (percent by weight): carbon 0.38 to 0.43, manganese 0.60 to 0.80, silicon 0.15 to 0.35, phosphorus 0.035 maximum, sulfur 0.040 maximum, chromium 0.70 to 0.90, nickel 1.65 to 2.00 and molybdenum 0.20 to 0.30; bar diameter 10.0 mm to19.6 mm, length 3 m to 6 m;

(ccclxxi) cold finished alloy steel round bars, designated as A-709; the foregoing in grade SAE 8740, according to the requirements of AMS 6322, annealed and cold drawn, with surface removal by micro-scalping, grinding or peeling to give a seam-free finish; tensile strength not higher than 825 MPa; hardness not over 241 Brinell; having the following chemical composition (percent by weight): carbon 0.38 to 0.43, manganese 0.75 to 1.00, silicon 0.15 to 0.35, phosphorus 0.025 maximum, sulfur 0.025 maximum, chromium 0.40 to 0.60, nickel 0.40 to 0.70, molybdenum 0.20 to 0.30 and copper 0.35 maximum; bar diameter 8.5 mm to 13.6 mm, length 3 m to 6 m;

(ccclxxii) cold finished alloy steel hexagon bars, designated as A-709; the foregoing in grade SAE 8740, according to the requirements of AMS 6322, annealed and cold drawn; tensile strength not higher than 825 MPa; hardness not over 241 Brinell; having the following chemical composition (percent by weight): carbon 0.38 to 0.43, manganese 0.75 to 1.00, silicon 0.15 to 0.35, phosphorus 0.025 maximum, sulfur 0.025 maximum, chromium 0.40 to 0.60, nickel 0.40 to 0.70, molybdenum 0.20 to 0.30 and copper 0.35 maximum; bar size (across flats) 19.0 mm to 23.8 mm, length 3 to 6 m;

(ccclxxiii) cold finished alloy steel round bars, designated as A-709; the foregoing in grade SAE 4140, according to the requirements of AMS 6382, annealed and cold drawn; tensile strength not higher than 860 MPa; hardness not over 241 Brinell; having the following chemical composition (percent by weight): carbon 0.38 to 0.43, manganese 0.75 to 1.00, silicon 0.15 to 0.35, phosphorus 0.025 maximum, sulfur 0.025 maximum, chromium 0.80 to 1.10, molybdenum 0.15 to 0.25, nickel 0.25 maximum and copper 0.35 maximum; bar diameter 6.3 mm to 12.7 mm, length 3 m to 6 m;

(ccclxxiv) cold formed bars and rods, designated as A-752 and entered in an aggregate annual quantity not to exceed 5,000 t; the foregoing not further worked other than cold finished, thickness 12.0 mm or more but not over 15.00 mm; having the following chemical composition (percent by weight): carbon 0.43 to 0.50, manganese 0.85 to 1.15,silicon 1.45 to 1.60, phosphorus not over 0.025, sulfur not over 0.020, chromium 0.45 to 0.65 and vanadium 0.10 to 0.17; surface finish peeled (shiny finish), free from pits, cracks or seams; smooth edges; cut to length; certified free of all surface defects and verified by 100 percent eddy current inspection;

(ccclxxv) alloy steel round bars (42CrMo4), designated as A-767; the foregoing 24.9 mm to 95 mm in diameter; length not over 3.65 m; quenched and tempered; induction hardened; ground and polished; finished to an f7 outside diameter tolerance; having the following chemical composition (percent by weight): carbon 0.38 to 0.45, manganese 0.60 to 0.90, silicon 0.15 to 0.40, chromium 0.90 to 0.120 and molybdenum 0.15 to 0.25; core tensile strength 800 MPa minimum; induction hardened surface hardness of not less than 55 and not over 60 HRc; maximum surface roughness rating of Ra equal to 0.6 micrometer for finished round bar;

(ccclxxvi) scaleless oil tempered finish, carbon steel flat "brush wire," designated as A-786; the foregoing with round edges, drawn and cold rolled from wire rod, and in-line oil hardened, tempered and cut to length, thickness not over 0.61 mm; width not over 3.43 mm; length not over 665 mm; having the following chemical composition to AISI 1050 (percent by weight): carbon 0.50 to 0.55, silicon 0.15 to 0.35, manganese 0.50 to 0.70, phosphorus not over 0.02, sulfur not over 0.025, chromium not over 0.05 and nickel not over 0.05; tensile strength 1300 N/mm^2 or more but not over1500 N/mm^2, hardness not less than HRa 70.1 but not over HRa 72.4; camber not over 3.8 mm in 665 mm; smooth rolled round edges; surface finish free from scale, pits, scratches, rust, cracks or seams;

(ccclxxvii) cold finished steel bars, of SAE 4150 DH, AQ steel, designated as A-607; the foregoing quenched, tempered and turned and polished; manufactured from killed steel, which has been vacuum degassed; forged or rolled, having undergone forging of the ingots to reduce their size before hot rolling; forged or rolled to a forging ratio of 6S from ingot or bloom; free of cracks, seams voids or inclusions, which could weaken the material or develop into a defect during further processing, after turn and polishing; residual magnetism less than 10 gauss; surface roughness less than 10S after straightening; diameter allowance tolerance 0 or more but not over 0.15 mm; physical dimensions: 10.2, 15.2, 16.2, 20.2, 22.2, 25.2, 28.2, 32.2, 36.3, 38.3, 40.2, 44.3, 45.3, 50.3 or 63.3 mm; circularity tolerance less than 0.05 mm; straightness tolerance not over 0.5 mm/m; hardness after quench and temper HRC 24 to 32 at the surface, core and throughout the bar; variation from core to surface from one end to the other not over 5HRC; macrostructure not exceeding S2, R2 and C2 of the Plate 1 of visual aid of ASTM E381-94; banding on the microstructure conforming to S5 of ASTM A534-94; average austenite grain size 6 or finer and uniform so that no grains of 3 sizes or coarser exist, according to ASTM E112-96 and ASTM E930-92; non-metallic inclusions inspected by ASTM E45-97 shall not exceed the rating in Table 2 of ASTM A534-94;

(ccclxxviii) cold drawn aircraft quality E-4130 steel bars, designated as A-621, the foregoing having hexagonal cross section of not over 16.00 mm across flats; meeting the following specifications: MIL – S -6758, AMS-S-6758, AMS-2301, ASTM-A-331, AMS-6348, AMS-2304, and AMS-6370; condition D4, spec latest revisions; having the following chemical composition (percent by weight): carbon 0.28 to 0.33, silicon 0.15 to 0.35, manganese 0.40 to 0.60, sulfur not over 0.025, phosphorus not over 0.025, chromium 0.80 to 1.10, molybdenum 0.10 to 0.25, nickel not over 0.25 and copper not over 0.35; heat treated; length 3,000 mm to 4,000 mm;

(ccclxxix) cold finished bars, designated as A-629 and entered in an aggregate annual quantity not to exceed 835 t; with the following characteristics: cold finished, killed steel, normalized, peeled to a tolerance of +0.6 mm, -0, and stress relieved, coarse grain practice (range of 2 to 5); having the following chemical composition (percent by weight): carbon 0.37 to 0.45, phosphorus not over 0.040, manganese 1.35 to 1.65, sulfur 0.08 to 0.13 and silicon 0.10 to 0.20; manufactured to the following sizes: 157.15 mm rolled diameter, 168.84 mm rolled diameter, 199.30 mm rolled diameter or 238.13 mm rolled diameter; certified to have a Rockwell B hardness that increases from the outer surface to the core; certified to be prepared with the following heat treatment: normalized by heating from a cold charge at the rate of 50°C per hour to 400°C, from 400°C to 850°C at any rate; hold at 850°C for 30 minutes per inch (71 s/mm) of diameter; cooled in still air and peeled; stress relieved by heating from a cold charge at the rate of 50 °C per hour to 400 °C , from 400 °C to 600°C heat at any rate; hold at 600 °C for one hour per inch (142 s/mm) of diameter; cooled down at rate of 100°C per hour to 350°C and then air cooled;

(ccclxxx) cold finished steel bars, the foregoing designated as A-629 and entered in an aggregate annual quantity not to exceed 550 t; with the following characteristics: cold finished bars, killed steel, normalized, peeled to a tolerance of +0.6 mm, -

0, and stress relieved, coarse grain practice range of (2-5); having the following chemical composition (percent by weight): carbon 0.43 to 0.50, phosphorus not over 0.040, silicon 0.15 to 0.20, molybdenum not over 0.06, copper 0.35, manganese 0.60 to 0.90, sulfur 0.02 to 0.050, chromium not over 0.20 and nickel not over 0.25; manufactured to the following sizes: 114.52 mm rolled diameter, 126.79 mm rolled diameter, 138.94 mm rolled diameter or 150.38 mm rolled diameter; certified to have a Rockwell B hardness that increases from the outer surface hardness to the core; certified to be prepared with the following heat treatment (thermal recipe): normalized by heating at 50°C per hour to 400°C, then heated to 850°C at any rate; soaked at 850°C for 30 minutes per inch (71 s/mm) in diameter; cooled in still air to ambient and peeled; stress relieved by heating at 50°C per hour to 400°C, then heated to 550°C at any rate; soaked at 550°C for one hour per inch (142 s/mm) in diameter; cooled at a rate of 100°C maximum per hour to 350°C; cooled in still air;

(ccclxxxi) cold-drawn T-sections of non-alloy steel, designated as A-661, the foregoing not further worked than cold formed or cold finished; having the following chemical composition (percent by weight): carbon 0.14 to 0.20, manganese 1.20 to 1.50, silicon 0.15 to 0.50, aluminum 0.01 to 0.07, vanadium 0.04 to 0.06, phosphorus not over 0.02, sulfur not over 0.02, chromium not over 0.20 and nickel not over 0.15; yield strength of not less than 482 N/mm^2, tensile strength of not less than 620 N/mm^2; elongation in 50 mm not less than 14 percent; with physical dimensions: vertical section with height of 37.2 mm or more but not over 57.8 mm and width 10.7 mm or more but not over 15.3 mm; joined at 90 degrees to the center of the top horizontal section that has a width of 44.2 mm or more but not over 66.3 mm and a height of 15.7 mm or more but not over 21.3 mm to produce a frontal view of a "T" with the height of the entire shape equaling the height of the vertical section added to the thickness of the top horizontal section, totaling less than 80 mm; all six of the section's outside corners having radii of 1.0 mm to 2.0 mm and the two inside corners having radii of 2.5 mm or more but not over 4.5 mm; weight per m ranging from 8.7 kg to 17.9 kg;

(ccclxxxii) irregular sections of iron or non-alloy steel, designated as A-661, the foregoing not further worked than cold formed or cold finished; having the following chemical composition (percent by weight): carbon 0.09 to 0.13, manganese 1.25 to 1.45, silicon 0.15 to 0.50, aluminum 0.01 to 0.04, vanadium 0.04 to 0.06, phosphorus not over 0.02, sulfur not over 0.02, chromium not over 0.20 and nickel not over 0.15; yield strength of not less than 355 N/mm^2, tensile strength 490 N/mm^2 to 630 N/mm^2; elongation in 50 mm not less than 22 percent, with physical dimensions of: two segments constituting one unitary and solid piece, respectively known as the half-round segment and rectangular segment; half-round segment having a radius of 26.15 mm to 27.15 mm; rectangular segment 52.3 mm to 54.3 mm high and 26.9 mm to 28.7 mm wide joined on one 52.3 mm to 54.3 mm side to the half-round segment and the opposite side having a 4.2 mm to 5.2 mm radius on one corner and the other corner having a 4.4 mm to 4.8 mm x 11.0 mm to 11.5 mm notch with the 11 mm side parallel to the flat side of the half-round segment; notch blends into the long and short sides of the rectangular segment with 3 mm to 4.8 mm chamfers; weight 19.6 kg/m to 20.0 kg/m;

(ccclxxxiii) cold-finished bars of alloyed steel, designated as A-744, the foregoing being rounds with diameters of 25 mm or more but less than 48 mm, quenched and tempered with qualities according to specifications AISI/SAE 4130, 4140, 4145, or 4150;

(ccclxxxiv) cold-finished bars of alloyed steel, designated as A-744, the foregoing being rounds with diameters of 24 mm or more but less than 48 mm, quenched and tempered with qualities according to specifications AISI/SAE 4340;

(ccclxxxv) cold-finished bars of alloyed steel, designated as A-744, the foregoing being rounds with diameters of 24 mm or more but less than 48 mm, quenched and tempered with qualities according to specifications AISI/SAE 8620;

(ccclxxxvi) round cold finished bars, designated as A-810 and entered in an aggregate annual quantity not to exceed 13,000 t; the foregoing cold finished, peeled, steel grades AISI(SAE) 1018, 1020, 1040 or 1045; killed; permissible curvature 1 mm on 1 m length; diameter from 306 mm to 330 mm;

(ccclxxxvii) round cold finished bars, designated as A-810 and entered in an aggregate annual quantity not to exceed 1,700 t; the foregoing cold finished, peeled, steel grades AISI(SAE) 4140, 4142, 4150, 4340; killed; permissible curvature 1 mm on 1 m length; diameter from 306 mm to 330 mm;

(ccclxxxviii) round cold finished bars, designated as A-810 and entered in an aggregate annual quantity not to exceed 300 t; the foregoing cold finished, peeled, steel grade AISI(SAE) 8620; killed; permissible curvature 1 mm on 1 m length; diameter from 306 mm to 330 mm;

(ccclxxxix) hot-rolled thread bars, designated as A-769; the foregoing of grade 95, diameter 18 mm to 75 mm; meeting the following characteristics: hot-rolled and tempered bars of non alloy steel with deformations forming a screwable right hand thread, in diameters of 18 mm, 22 mm, 25 mm, 28 mm, 30 mm, 35 mm, 43 mm, 50.5 mm, 63.5 mm or 75 mm, complying with ASTM A615 with deformations being spaced along the bar at substantially uniform distances ranging from 8 mm to 24 mm; water quenched and tempered; having the following chemical composition (percent by weight): carbon 0.19 to 0.28, silicon 0.38 to 0.64, manganese 1.3 to 1.5, phosphorus not over 0.04, sulfur not over 0.03 and chromium 0.30 to 0.35; with the following other properties: a yield strength of not less than 670 MPa, a tensile strength of not less than 800 MPa and elongation on a 10 diameter gage of not less than 16 percent for diameters up to 43 mm and not less than 10 percent for diameters greater than 43 mm;

(cccxc) hot-rolled thread bars, designated as A-769, the foregoing of grade 150, diameter 40 mm to 75 mm; meeting the following characteristics: hot-rolled and tempered bars of nonalloy steel with deformations forming a screwable right hand thread; diameter 40 mm, 47 mm, 57.5 mm, 63 mm or 75 mm; complying with ASTM 722 for Type II with deformations being spaced along the bar at substantially uniform distances ranging from 20 mm to 30 mm, water quenched and tempered , cold stretched and annealed; having the following chemical composition (percent by weight): carbon 0.60 to 0.80, silicon 0.15 to 0.45 manganese 0.5 to 1.0, phosphorus not over 0.035 and sulfur not over 0.035; with the following other properties: a yield strength of not less than 950 MPa and a tensile strength of not less than 1050 MPa for diameters 40 mm and 47 mm and a yield strength of not less than 830 MPa and a tensile strength of not less than 1035 MPA for diameters 57.5 mm and larger, and elongation on a 10 diameter gage of not less than 7 percent;

(cccxci) hot-rolled weldable thread bars, designated as A-769, the foregoing of grade 145; diameter 12.5 mm to 20 mm; meeting the following characteristics: hot-rolled and tempered bars of nonalloy steel with deformations forming a screwable right hand thread; diameter 12.5 mm, 15 mm or 20 mm; with deformations being spaced along the bar at substantially uniform distances ranging from 6 mm to 10 mm; water quenched and tempered; having the following chemical composition (percent by weight): carbon 0.18 to 0.22, silicon 0.43 to 0.47, manganese 1.4 to 1.6, phosphorus not over 0.035 and sulfur not over 0.035; with the following other properties: a yield strength of not less than 1000 MPa, a tensile strength of not less than 1100 MPa, and elongation on a 10 diameter gage of not less than 10 percent;

(cccxcii) hot-rolled thread bars, grade 150, designated as A-769, the foregoing in diameter 18 mm; meeting the following characteristics: hot-rolled and tempered bars of nonalloy steel with deformations forming a screwable right hand thread; complying with ASTM 722 for Type II with deformations being spaced along the bar at substantially uniform distances ranging from 7 mm to 9 mm; water quenched and tempered; cold stretched and annealed; having the following chemical composition (percent by weight): carbon 0.60 to 0.80, silicon 0.15 to 0.45, manganese 0.5 to 1.0, phosphorus not over 0.035 and sulfur not over 0.035; with the following other properties: a yield strength of not less than 950 MPa, a tensile strength of not less than 1050 MPa, and elongation on a 10 diameter gage of not less than 7 percent;

(cccxciii) cold finished stainless steel bars of circular cross section, designated as A-611; the foregoing with diameter not over 81 mm; surface hardened; precision ground; having the following chemical composition (percent by weight): carbon 0.42 to 0.50, silicon 0.30 to 1.00, manganese 0.20 to 1.00, phosphorus not over 0.045, sulfur not over 0.030, chromium 12.5 to 14.5; grain size of 6 or finer as per DIN 50601; hardness HV 550 to 620; surface finish maximum RMS 12; minimum hardness depth of 0.4 mm;

(cccxciv) cold finished stainless steel bars of circular cross section, designated as A-611; the foregoing with diameter not over 81 mm; surface hardened; precision ground; having the following chemical composition (percent by weight): carbon 0.85 to 0.95, silicon not over 1.00, manganese not over 1.00, phosphorus not over 0.045, sulfur 0.015 to 0.030, chromium 17.0 to 19.0, molybdenum 1.0 to 1.3 and vanadium 0.07 to 0.12; grain size of 8 or finer as per DIN 50601; hardness HV 550 to 620; surface finish maximum RMS 12; minimum hardness depth of 0.4 mm;

(cccxcv) modified chemistry AISI 400 stainless sulfurized plastic mold steel, designated as A-626; the foregoing if round sections with diameter from 12 mm to 500 mm; if flat sections with thickness 12 mm to 350 mm and width 45 mm to 1250 mm; having the following chemical composition (percent by weight): carbon 0.02 to 0.14, silicon 0.10 to 0.60, manganese 0.50 to 1.45, phosphorus not over 0.04, sulfur 0.08 to 0.25, chromium 12.4 to 15.2, nickel 0.20 to 1.80, molybdenum 0.05 to 1.0, vanadium not over 0.25, nitrogen 0.02 to 0.12, copper not over 0.45 and aluminum not over 0.030; hydrogen not over 7.0 parts per million; cleanliness according to ASTM E45/87, Method A plate I.: Slag type A: T-, H-; Slag type B: T 2.0, H2.0; Slag type C: T 1.0, H 1.0; Slag type D: T 2.0,H less than 1.0; hardness of 260 to 360 Brinell;

(cccxcvi) precipitation hardening stainless mold steel, designated as A-626; the foregoing if round sections with diameter 12 mm to 400 mm; if flat sections with thickness 12 mm to 306 mm and width 150 mm to 762 mm; having the following chemical composition (percent by weight): carbon 0.025 to 0.035, silicon 0.20 to 0.40, manganese 0.20 to 0.40, phosphorus not over 0.020, sulfur not more than 0.030, chromium 11.8 to 12.2, nickel 9.00 to 9.50, molybdenum 1.30

to 1.50, titanium not over 0.010, nitrogen not over 0.010, niobium not over 0.005, zirconium not over 0.005, copper not over 0.20 and aluminum 1.60 to 1.80, hydrogen not over 3 parts per million; cleanliness according to ASTM E45/97, Method A plate l-r: Slag type A:T-,H-; Slag type B: T less than 1,5 H less than 1.0; Slagtype C: T less than 1.0 H less than 1.0; Slag type D: T less than 1,5, H less than 1.0;

(cccxcvii) modified chemistry AISI 400 stainless sulfurized plastic mold steel, designated as A-626; the foregoing if round sections with diameter 12 mm to 27.9 mm; if flat sections with thickness 12 mm to 42.9 mm and width 300 mm to 1016 mm; having the following chemical composition (percent by weight): carbon 0.31 to 0.36, silicon 0.20 to 0.50, manganese 1.20 to 1.50, phosphorus not over 0.035, sulfur 0.08 to 0.15, chromium 15.2 to 17.0, nickel 0.40 to 0.70, molybdenum not over 0.60, vanadium not over 0.40, nitrogen not over 0.14, copper not over 0.30 and aluminum not over 0.030; hydrogen not over 7.0 parts per million; cleanliness according to ASTM E45/87, Method A plate I.:Slag type A: T-, H-; Slag type B: T 2.0, H 2.0; Slag type C:T 1.0, H 1.0; Slag type D: T 2.0 ,H less than 1.0; hardened and tempered hardness of 260 to 400 Brinell;

(cccxcviii) forged, pre-hardened, martensitic stainless steel bars, designated as A-669; the foregoing in modified AISI 420; having the following chemical composition (percent by weight): carbon 0.28 to 0.38, silicon not over 1.0, manganese 1.00 to 1.40, sulfur 0.05 to 0.10 and chromium 15.0 to 17.0; hardness in as supplied condition of 280 to 355HB (Brinell Hardness) (29 to38 HRc); thickness 133 mm to 229 mm and width 280 mm to 1,100 mm; in a black cold-finished condition;

(cccxcix) stainless steel bars, designated as A-805; the foregoing 20 to 30 percent air by volume, permeated with interconnecting pores of three (3) to twenty (20) micrometers diameter to allow passage of gas through the steel; produced from a mixture of ferritic stainless steel long fibers having a width of 100 micrometer or less, and ferritic stainless steel powder, all of which are compressed in a cold isostatic press, sintered in a vacuum atmosphere, and then held in nitrogen gas or ammonia gas at a temperature of 900 to 1050°C to impart porous quality over the entire surface; hardness HRc 35 to 40, tensile strength 441 MPa to 490 MPa; heat transfer coefficient (at room temperature) of 2.0993 to 2.3994 kilocalories m^{-2} h^{-1} $°C^{-1}$; linear expansion (at 20 to 150°C) of 12 x 10^{-6} to 12.5 x 10^{-6} $°C^{-1}$; having the following chemical composition (percent by weight): carbon 0.001 to 0.100, silicon 0.25 to 1.75, manganese 0.05 to 0.50, phosphorus 0.005 to 0.075, sulfur 0.001 to 0.100, nickel 0.050 to 0.500, chromium 10.00 to 20.00 and molybdenum 0.50 to 3.00;

(cd) stainless steel bars further worked than cold finished and formed, designated as A-806; the foregoing with diameter 41 mm to 106 mm; having the following chemical composition (percent of weight): carbon 0.28 to 0.34, manganese 0.30 to 0.60, silicon 0.30 to 0.80, phosphorus not over 0.020, sulfur not over 0.010, chromium 14.5 to 16.0, molybdenum 0.95 to 1.10, nitrogen 0.35 to 0.44 and nickel not over 0.30; or

(cdi) stainless steel non-magnetic wire, designated as A-793; the foregoing having the following chemical composition (percent by weight): carbon 0.07 to 0.12, silicon not over 1.00, manganese 9.00 to 10.00, phosphorus not over 0.030, sulfur not over 0.030, chromium 17.5 to 19.0, nitrogen 0.20 to 0.35 and nickel 5.0 to 6.0; diameter 0.500 mm to 3.493 mm, a diameter tolerance of +/- 0.020 mm after annealing, an out-of-round tolerance of 0.020 mm after annealing; tensile strength 750 N/mm^2 to 2,200 N/mm^2, and magnetic permeability of 1.010 maximum; maximum surface crack depth 0.03 mm;

(cdii) quick coupler ball-and-socket fittings of steel, designated as A-698; the foregoing in the following shapes: balls; sockets; lever closure rings; socket end caps; end balls; elbows; step bows; tees; reducers; enlargers; strainers; flanged connections with a ball; flanged connections with a socket; balls with nominal pipe threads on one end; sockets with nominal pipe threads on one end, hose connections and components thereof; all the foregoing whether galvanized or not, of which each fitting is capable of being attached to another by means of a ball-and-socket connection and secured by a lever closure; with the internal diameter of the end of each fitting 40 mm or more but not over 350 mm;

(cdiii) round electric welded steel tubing, designated as A-605; the foregoing with outside diameter greater than 20 mm but less than 50 mm; wall thickness greater than 2.0 mm but less than 7.00 mm; having the following chemical composition (percent by weight): carbon 0.14 to 0.18, silicon 0.05 to 0.30, manganese 0.60 to 1.20, phosphorus 0.020 maximum, sulfur 0.006 maximum and niobium 0.005 to 0.040; tensile strength 590 to 740 N/mm^2, yield strength 520 to 665 N/mm^2, minimum elongation 15 percent;

(cdiv) steel brazed double wound or electric resistance welded steel tubing, designated as A-605; the foregoing with outside diameter greater than 4.0 mm but less than 20 mm; wall thickness greater than 0.4 mm but less than 2.1 mm; having the following chemical composition (percent by weight): carbon 0.12 maximum, silicon 0.35 maximum, manganese 0.60 maximum, phosphorus 0.040 maximum and sulfur 0.040 maximum; mechanical properties: tensile strength 290 N/mm^2

minimum, yield strength 175 N/mm^2 minimum, 25 percent minimum elongation; inside of tube having copper plating 3 micrometer minimum thickness, outside of tube having yellow zinc dichromate plating;

(cdv) galvanized welded steel circular tubes, designated as A-634; the foregoing with plain square cut ends produced in accordance with ASTM A120 (E-H); outer diameter 19.30 mm to 28.60 mm, 31.40 mm to 44.40 mm, 46.00 mm to 62.40 mm, 71.00 mm to 91.00 mm, 99.50 mm to 116.40 mm or 139.10 mm to 170.40 mm; inside diameter 14.10 mm to 21.30 mm, 25.00 mm to 37.50 mm, 39.20 mm to 54.91 mm, 61.10 mm to 80.50 mm, 88.50mm to 105.00 mm or126.50 mm to 157.00 mm, respectively; wall thickness 2.00 mm to 2.90 mm, 3.00 mm to 3.50 mm, 3.51 mm to 3.80 mm, 4.70 mm to 5.40 mm, 5.41 mm to 5.85 mm or 5.86 mm to 6.90 mm, respectively; 2,962 mm to 3,063 mm in length; chamfered to eliminate sharp edges on both ends; zinc coating on the outside to a thickness of 0.02 mm to 0.05 mm; physical properties: elongation 45 to 50 percent; hardness 58 to 72 Rockwell B; AISI C1012; having the following chemical composition (percent by weight): iron 97 to 99, carbon 0.25, manganese 0.99; phosphorus 0.035, sulfur 0.035, zinc coating 0.50 to 0.99 and aluminum 0.01 to 0.10;

(cdvi) coated brazed double wall steel tubing of circular cross section, designated as A-641; the foregoing with tubing characteristics: outer diameter not greater than 8 mm; wall thickness not greater than 0.7 mm; having the following chemical composition (percent by weight): 0.15 maximum carbon, 0.60 maximum manganese, 0.05 maximum phosphorus and 0.05 maximum sulfur; tubes coated with the following materials, in order from the innermost material: zinc plating minimum 13 micrometer thickness, primer coating of approximately 10 micrometer thickness, Polyamide 11 coating thickness of 10 micrometer to 200 micrometers (mechanical properties of Polyamide 11 (nylon coating): specific gravity of 1.03 at 23 °C; melt point of 183 to187 °C; yield strength of 42 MPa; yield elongation of 8 percent, ultimate strength of 53 MPa; ultimate elongation of 300 percent and Rockwell hardness of 108); polypropylene coating thickness 0.60 mm to 1.3 mm;

(cdvii) coated welded single wall steel tubing of circular cross section, designated as A-641; the foregoing with tubing characteristics: outer diameter not greater than 8 mm; wall thickness not greater than 0.7 mm; having the following chemical composition (percent by weight): 0.15 maximum carbon, 0.60 maximum manganese, 0.05 maximum phosphorus and 0.05 maximum sulfur; tubes coated with the following materials, in order from the innermost material: zinc plating minimum 13 micrometer thickness; primer coating of approximately 10 micrometer thickness; Polyamide 11 coating thickness of 10 micrometer to 200 micrometer, the mechanical properties of Polyamide 11 (nylon coating) are as follows: specific gravity of 1.03 at 23 °C; melt point 183 to187 °C; yield strength 42 MPa; yield elongation 8 percent; ultimate strength 53 MPa; ultimate elongation 300 percent; Rockwell hardness of 108;

(cdviii) coated welded single wall steel tubing of a circular cross section, designated as A-641; the foregoing with tubing characteristics: outer diameter not greater than 12 mm, wall thickness not greater than 0.9 mm: having the following chemical composition (percent by weight): 0.15 maximum carbon, 0.60 maximum manganese, 0.05 maximum phosphorus and 0.05 maximum sulfur; tubes are coated with the following materials, in order from the innermost material: zinc plating minimum 13 micrometer thickness, primer coating of approximately 10 micrometer thickness, Polyamide 11 coating thickness of 10 micrometer to 200 micrometer (mechanical properties of Polyamide 11 (nylon coating) are as follows: specific gravity 1.03 at 23 °C; melt point 183 to 187 °C; yield strength 42 MPa; yield elongation 8 percent; ultimate strength 53 MPa; ultimate elongation 300 percent; Rockwell hardness of 108); polypropylene coating thickness of 0.60 mm to 1.3 mm;

(cdix) coated welded single wall steel tubing of circular cross section, designated as A-641; the foregoing with tubing characteristics: outer diameter not greater than 12 mm, wall thickness not greater than 0.9 mm; having the following chemical composition (percent by wight): 0.15 maximum carbon, 0.60 maximum manganese, 0.05 maximum phosphorus and 0.05 maximum sulfur; tubes coated with the following materials, in order from the innermost material: zinc plating minimum 13 micrometer thickness, primer coating of approximately 10 micrometer thickness, Polyamide 11 coating thickness of 10 micrometer to 200 micrometer; mechanical properties of Polyamide 11 (nylon coating): specific gravity of 1.03 at 23 °C, melt point 183 to 187 °C; yield strength 42 MPa ; yield elongation 8 percent; ultimate strength 53MPa; ultimate elongation 300 percent; Rockwell hardness of 108;

(cdx) nonalloy steel pipe, designated as A-698; the foregoing with outside diameter 49 mm or more but not over 195 mm; wall thickness 0.64 mm or more but not over 1.1 mm; pressure rating of 12 bar or more but not over 25 bar; with components of ball-and socket fittings of non-alloy steel welded to each end (the ball on one end of the pipe and the socket on the opposite end) such that one pipe is capable of being attached to another of the same diameter by means of the ball-and-socket connection and secured by a lever closure; the entire outer surface of which has been galvanized;

(cdxi) galvanized rectangular hollow sections, designated as A-751; the foregoing welded, complying with ASTM A500, but having a minimum yield strength of 450 MPa and galvanized, with a smooth in-line galvanized external zinc coating of 100 g/m^2 or more but not over 200 g/m^2 (0.60oz/ft^2); galvanizing applied after welding with the zinc coating further

passivated to resist white rust; not further worked other than cold forming; not formed from pre-galvanized strip product; supplied with or without internal corrosion protection (barrier or zinc rich paint) applied to the inside of the section; size range of rectangles chemistry is controlled to provide a carbon equivalent of no more than 0.39 (calculated by the following formula: CE = C + (Mn/6) + ((Cr+Mo+V)/5) + ((Ni+Cu)/15))); having the following chemical composition (percent by weight): 0.23 carbon, 1.35 manganese, 0.25 silicon, 0.10 aluminum, 0.035 phosphorus and 0.035 sulfur; produced from fully killed steel with fine grain; in wall thicknesses of 1.55 mm to 6.05 mm; in either of the following sections:

(i) squares, 19.0 mm by 19.0 mm to 101.6 by 101.6 mm; or

(ii) rectangles, 38.0 by 25.0 mm to 152.4 by 50.0 mm;

(cdxii) cold finished 316L vacuum melted stainless steel medical implant profiles, designated as A-750 and entered in an aggregate annual quantity not to exceed 25 t; conforming to ASTM F138; having the following chemical composition (percent by weight): carbon not over 0.030, chromium 17 to 19, molybdenum 2.25 to 3 and nickel 13 to 15; with tensile strength 850 MPa to 1,100 MPa; with surface cold-rolled, free from cracks, scratches and seams; in straight lengths from 2.90 to 3.20 meters; meeting one of the following sets of dimensions:

(i) width 10.0 mm to 10.4 mm; thickness 3.0 mm to 3.4 mm; corner radius 0.4 mm to 0.6 mm on all four corners of the profile; profile cross-section having arc with a bend radius of 10 mm on the bottom, and having an arc with a bend radius of 13.2 mm on the top; the bottom and the top being concentric; bottom arc measuring from 50 to 55 degrees of convexity, resulting in a frontal view of an arc with parallel vertical sides;

(ii) width 10.0 mm to 10.4 mm; thickness 3.3 mm to 3.7 mm; corner radius 0.4 mm to 0.6 mm on all four corners of the profile; profile cross-section having arc with a bend radius of 10 mm on the bottom, and having an arc with a bend radius of 13.50 mm on the top; the bottom and the top being concentric; bottom arc measuring from 45 to 50 degrees of convexity, resulting in a frontal view of an arc with parallel vertical sides;

(iii) width 12.0 mm to 12.4 mm; thickness 3.8 mm to 4.2 mm; corner radius 0.7 mm to 1.3 mm on all four corners; profile cross-section having arc with bend radius of 25 mm on the bottom, and having an arc with bend radius of 29 mm on the top; the bottom and the top being concentric; bottom arc measuring from 37 to 42 degrees of convexity, resulting in a frontal view of an arc with parallel vertical sides;

(iv) width 16.0 mm to 16.4 mm; thickness 4.8 mm to 5.2 mm; corner radius 0.9 mm to 1.1mm on all four corners; profile cross-section having arc with bend radius of 25 mm on the bottom, and having an arc with a bend radius of 30 mm on the top; the bottom and the top being concentric; bottom arc measuring at 35 to 40 degrees of convexity, resulting in a frontal view of an arc with parallel vertical sides;

(v) width 10.87 mm to 11.28 mm; thickness 3.12 mm to 3.53 mm; corner radius 1.4 mm to 1.48 mm on the bottom corners and corner radius 1.0 mm to 1.1 mm on the top corners; profile cross-section having arc with a bend radius of 9.97 mm on the bottom, and having an arc with a bend radius of 13.30 mm on the top; the bottom and the top being concentric; bottom arc measuring from 42 to 48 degrees of convexity, resulting in a frontal view of an arc with parallel vertical sides;

(vi) width 13.39 mm to 13.79 mm; thickness 4.06 mm to 4.47 mm; corner radius 1.80 mm to 1.84 mm on the bottom corners and 1.54 mm to 1.58 mm on the top corners; profile cross-section having arc with bend radius of 24.96 mm on the bottom, and having an arc with bend radius of 29.23 mm on the top; the bottom and the top being concentric; bottom arc measuring from 35 to 40 degrees of convexity, resulting in a frontal view of an arc with parallel vertical sides;

(vii) width 17.27 mm to 17.68 mm; thickness 5.08 mm to 5.49 mm; corner radius 2.30 mm to 2.35 mm on the bottom corners and corner radius 1.92 mm to 1.96 mm on the top corners; profile cross-section having arc with bend radius of 24.96 mm on the bottom, and having an arc with a bend radius of 30.24 mm on the top; the bottom and the top being concentric; bottom arc measuring from 43 to 48 degrees of convexity, resulting in a frontal view of an arc with parallel vertical sides;

(viii) width 8.9 mm to 9.3 mm; thickness 0.9 mm to 1.3 mm; corner radius of 0.5 mm to 0.6 mm on all four corners; profile cross-section having arc with bend radius of 5 mm on the bottom, and having an arc with a bend radius of 6.10 mm on the top; the bottom and the top being concentric; bottom arc measuring from 90 to 95 degrees of convexity, resulting in a frontal view of an irregular crescent; the left and right sides of the profile at a 44 to 46-degree angle from the perpendicular toward the center from the bottom;

(ix) width 10.8 mm to 11.2 mm; thickness 3.1 mm to 3.5 mm; corner radius 1.40 mm to 1.80 mm on the bottom corners and 0.9 mm to 1.4 mm on the top corners; profile cross-section having arc with bend radius 10 mm on the bottom, and having an arc with a bend radius of 13.30 mm on the top; the bottom and the top being concentric; bottom arc measuring from 44 to 49 degrees of convexity, resulting in a frontal view of an irregular crescent; the left and right sides of the profile at 9 to 11 degrees from the perpendicular toward the center from the bottom;

(x) width 13.3 mm to 13.7 mm; thickness 4.0 mm to 4.4 mm; corner radius 1.90 mm to 2.50 mm on the bottom corners and 0.9 mm to 1.4 mm on the top corners; profile cross-section having arc with bend radius of 25 mm on the bottom, and having an arc with a bend radius of 29.20 mm on the top; the bottom and the top being concentric; bottom arc measuring from 30 to 35 degrees of convexity, resulting in a frontal view of an irregular crescent; the left and right sides at 9 to 11 degrees from the perpendicular toward the center from the bottom;

(xi) width 17.3 mm to 17.7 mm; thickness 5.0 mm to 5.4 mm; corner radius 1.9 mm to 2.60 mm on the bottom corners and 0.9 mm to 1.4 mm on the top corners; profile cross-section having arc with bend radius of 25 mm on the bottom, and having an arc with a bend radius of 30.20 mm on the top; the bottom and the top being concentric; bottom arc measuring from 25 to 30 degrees of convexity, resulting in a frontal view of an irregular crescent; the left and right sides of the profile at 9 to 11 degrees from the perpendicular toward the center from the bottom;

(xii) width 10.0 mm to 10.4 mm; thickness 3.2 mm to 3.6 mm; corner radius 0.4 mm to 0.6 mm on all four corners; profile cross-section having arc with bend radius of 10 mm on the bottom, and having an arc with a bend radius of 13.40 mm on the top; the bottom and the top being concentric; bottom arc measuring from 48 to 53 degrees of convexity, resulting in a frontal view of an arc with parallel vertical sides;

(xiii) width 11.8 mm to 12.2 mm; thickness 3.8 mm to 4.2 mm; corner radius 0.7 mm to 1.3 mm on all four corners; profile cross-section having arc with bend radius of 25 mm on the bottom, and having an arc with bend radius of 29 mm on the top; the bottom and the top being concentric; bottom arc measuring from 25 to 30 degrees of convexity, resulting in a frontal view of an arc with parallel vertical sides;

(xiv) width 15.8 mm to 16.2 mm; thickness 6.4 mm to 6.8 mm; corner radius 1.0 mm to 1. mm on the bottom corners and 4.8 mm to 4.84 mm on the top corners; profile cross-section having arc with bend radius of 17.78 mm on the bottom; the bottom arc of the profile measuring from 35 to 40 degrees of convexity; the top of the profile having a flat surface and the left and right sides vertical and parallel;

(xv) width 7.39 mm to 7.79 mm; thickness 3.61 mm to 4.01 mm; corner radius 0.27 mm to 0.33 mm on all four corners; with the top and bottom surfaces of the profile flat and the left and right sides vertical and parallel;

(xvi) width 12.5 mm to 12.9 mm; thickness 2.6 mm to 3.0 mm; profile has sharp corners with no corner radius, resulting in a true rectangular shape; with both the top and bottom surfaces of the profile flat and the left and right sides vertical and parallel; or

(xvii) width 16.3 mm to 16.7 mm; thickness 6.3 mm to 6.7 mm; corner radius of 1.40 mm to 1.80 mm on all four corners; with both the top and bottom surfaces of the profile flat and the left and right sides vertical and parallel;

(cdxiii) hot-rolled stainless steel bars, designated as A-614, the foregoing with a mill rolled rounded edge and thickness not over to 12 mm, width not over 180 mm and length not over 7 m; having the following chemical composition (in percent by weight), conforming to DIN 1.4021: carbon 0.18 to 0.22, silicon not over 1, manganese not over 1, phosphorus not over 0.045, sulfur not over 0.03, chromium 12 to 14, with or without other trace elements; tolerances for chemical composition and sizes conforming to ASTM A-484, latest revision;

(cdxiv) hot-rolled stainless steel bars, designated as A-614, the foregoing with a mill rolled rounded edge and thickness not over 15 mm, width not over 250 mm and length not over 7 m; having the following chemical composition (in percent by weight), conforming to DIN 1.4116: carbon 0.42 to 0.48, silicon not over 1, manganese not over 1, phosphorus not over 0.045, sulfur not over 0.03, chromium 13.8 to 15, molybdenum 0.45 to 0.60, vanadium 0.10 to 0.15, with or without other trace elements; tolerances for chemical composition and sizes conforming to ASTM A-484, latest revision;

(cdxv) hot-rolled stainless steel bars, designated as A-614, with a mill rolled rounded edge and thickness not over 12 mm, width not over 180 mm and length not over 7 m; having the following chemical composition (in percent by weight),

conforming to DIN 1.4117: carbon 0.35 to 0.40, silicon not over 1, manganese not over 1, phosphorus not over 0.045, sulfur not over 0.03, chromium 13 to 15, molybdenum 0.40 to 0.60, vanadium 0.10 to 0.15, with or without other trace elements; tolerances for chemical composition and sizes conforming to ASTM A-484, latest revision;

(cdxvi) stainless steel reinforcing bars, designated as A-739 and entered in an aggregate annual quantity not to exceed 50 t; the foregoing whether or not in irregularly wound coils, in diameters of less than 12.7 mm, with uniform dimensions; tensile strength not less than 620 MPa; yield strength not less than 448 MPa; with elongation of not less than 9 percent minimum in 200 mm; meeting all specifications of ASTM A955 M-96; in grades AISI 304, AISI 304LN, AISI 316, AISI 316LN or AISI 2205;

(cdxvii) cold-rolled AISI 316L vacuum melted stainless medical implant steel, designated as A-673 and entered in an aggregate annual quantity not to exceed 20 t; meeting the following characteristics: 20.4 mm to 20.6 mm in width with thickness of 15.4 mm to 15.6 mm or 20.35 mm to 20.65 mm in width with thickness of 17.85 mm to 18.15 mm; corner radius 0.1 mm to 0.9 mm; in straight lengths from 2.90 m to 3.20 m; with chemical composition according to ASTM F138; tensile strength from 931 MPa to 1,069 MPa; surface cold-rolled, free from cracks, scratches and seams; surface roughness 32 rms or better;

(cdxviii) hot-rolled annealed and pickled stainless steel wire rods per AISI 660, designated as A-645 and entered in an aggregate annual quantity not to exceed 500 t, the foregoing with the following additional specifications: diameter 5.3 mm to 12.2 mm; air melted without remelting through a consumable electrode melting process; with tensile strength 700 MPa maximum; and with the following chemical composition (percent by weight): carbon not over 0.080, silicon not over 1.00, manganese not over 2.00, nickel 24.00 to 27.00, chromium 13.50 to 16.00, molybdenum 1.00 to 1.50, copper not over 0.50, titanium 1.90 to 2.35, sulfur not over 0.0300, phosphorus not over 0.040, aluminum not over 0.35, vanadium 0.10 to 0.50, lead not over 0.0050, boron 0.0010 to 0.0100 and bismuth not over 0.00002 (0.2 ppm);

(cdxix) hot-rolled annealed, pickled, and coated stainless steel wire rods per AISI 305, designated as A-645 and entered in an aggregate annual quantity not to exceed 1,500 t, the foregoing with the following additional specifications: tensile strength 440.0 MPa to 590.0 MPa; diameter 5.3 mm to 15.7 mm; with the following chemical composition (percent by weight): carbon not over 0.025; silicon not over 1.00; manganese not over 2.00; nickel 10.50 to 13.00; chromium 17.00 to 19.00; sulfur not over 0.0300; and phosphorus not over 0.045; with a coating containing not less than 70 percent combined potassium sulfate and sodium sulfate;

(cdxx) stainless steel wire rod, designated as A-725 and entered in an aggregate annual quantity not to exceed 180 t, hot-rolled, in irregularly wound coils, of circular cross-section, with a diameter of less than 19 mm; having the following chemical composition (percent by weight): carbon 0.96 to 0.98, silicon 0.30 to 0.50, manganese 0.30 to 0.50, phosphorus not over 0.025, sulfur not over 0.025, nickel not over 0.60, chromium 16.0 to 18.0, molybdenum 0.40 to 0.65, copper not over 0.50 and vanadium not over 0.08; hardness less than 95 HRB; primary carbide controlled to less than 20 micrometer; micro inclusion rating shall not exceed the following rating value defined by ASTM E45 Method A: Type A-Thin not over 2.0, Type A-Heavy not over 1.5, Type B-Thin not over 2.0, Type B-Heavy not over 1.5, Type C-Thin not over 1.0, Type C-Heavy not over 1.0, Type D-Thin not over 2.0, and Type D-Heavy not over 1.0; depth of decarburization not exceeding the following: for sample rod of diameter of not over 10 mm, then not over 0.1 mm; for sample rod over 10 mm in diameter, then not over 1 percent of diameter;

(cdxxi) cut-to-length flat-rolled products, designated as A-645; the foregoing per ASTM A387 Grade 91; with the following additional characteristics: thickness 4.76 mm to 12.6 mm and 101.7 mm to 250 mm; width 3.5 m to 4.5 m; length 3.0 m to 12.5 m; with KCV Charpy impact property guarantee of 27 Jminimum at -29 °C; with the following additional chemical property guarantees, expressed as percentages by weight: carbon not over 0.10 and phosphorus not 0.015;

(cdxxii) flat-rolled products of other alloy steel, designated as A-677; the foregoing not further worked than hot-rolled; not in coils; specification: thermomechanically rolled, ASTM A 656 Grade 80 Type 7 plate, modified as described below by increasing the maximum carbon content and the minimum tensile strength; physical properties: width 600 mm or more; thickness: 12.45 mm to 13.08 mm; flatness: product to be controlled to one-third commercial flatness as specified under ASTM-A6; having the following chemical composition (percent by weight): carbon content not over 0.22; mechanical properties: tensile strength minimum ultimate tensile strength 690 MPa; maximum ultimate tensile strength 793 MPa; bend radius capable of taking a 90 degree bend with a radius 0.5 times the thickness of the plate (0.5 T) without any cracking as performed on a 88.9 mm vee opening lower die with a 3.18 mm radius upper die, the bend to be made perpendicular to the grain of the plate.

(cdxxiii) abrasion resistant, quenched and tempered flat-rolled products of alloy steel, designated as A-679 and entered in an aggregate annual quantity not exceed 180 t; the foregoing not further worked than hot-rolled, not in coils; physical dimensions: thickness 6 mm or more; width 600 mm or more; having the following chemical composition (percent by

weight): carbon not over 0.30, silicon not over 0.50, manganese not over 1.80, phosphorus not over 0.025, sulfur not over 0.001 and containing one or more of the following alloying elements: molybdenum not over 0.50, nickel not over 0.80, chromium not over 1.50, vanadium not over 0.08, niobium not over 0.05 and boron 0.001 to 0.005; mechanical properties: minimum Brinell hardness of 400 BHN; flatness of maximum deviation 1/2 of the values required by ASTM A6; fine-grained to austenitic grain size 6 or finer; water quenched after austenitization, followed by tempering, to achieve the specified hardness; vacuum degassed and desulfurized to maximum 0.001 percent to achieve the following standard of cleanliness: no inclusions greater than 1 mm in diameter on six polished test samples and not more than 3 inclusions greater than 1 mm in diameter per m^2 of the ground, finished surface; free from surface defects deeper than 0.3 mm or free from surface defects deeper than 0.5 mm if the affected area is not more than 5 percent of the total surface area;

(cdxxiv) flat-rolled products of other alloy steel, designated as A-686 and entered in an aggregate annual quantity not to exceed 1,000 t; not further worked than hot-rolled, not in coils; abrasion-resistant, heat-resistant steel; air quenched to produce the mechanical properties set out below; physical properties: width 600 mm or more; thickness 4.75 mm to 25 mm; having the following chemical composition (percent by weight): carbon 0.16 to 0.19, silicon 0.30 to 0.50, manganese 1.30 to 1.50, phosphorus not over 0.015, sulfur not over 0.005, chromium 0.90 to 1.45, nickel 0.50 to 0.90 and molybdenum 0.15 to 0.60; mechanical properties: hardness of minimum Brinell hardness 340 HB for thickness less than 20 mm and 320 HB for thickness greater than or equal to 20 mm; ductility: capable of being cold-formed without cracking to a 90-degree bend with a radius five times the thickness of the plate longitudinal to the rolling direction; capable of being cold-formed without cracking to a 90-degree bend with a radius four times the thickness of the product transverse to the rolling direction; capable of being cold rolled without cracking to a 360-degree bend with an inside diameter 30 times the thickness of the product; heat-resistance: retains its abrasion resistance at temperatures up to 500 °C due to hard chromium and molybdenum microcarbides;

(cdxxv) flat-rolled alloy steel structural products, the foregoing designated as A-697 and entered in an aggregate annual quantity not exceed 500 t; 4.0 mm to 16.0 mm in thickness; not over 3,350 mm in width; having the following chemical composition (expressed as percent by weight): carbon 0.145 to 0.194, silicon 0.15 to 0.30, manganese 1.15 to 1.35, phosphorus not over 0.02, sulfur not over 0.003, chromium 0.10 to 0.30, nickel not over 0.10, molybdenum not over 0.70, vanadium not over 0.055, titanium not over 0.01, copper not over 0.10, aluminum 0.045 to 0.080, niobium not over 0.020, boron 0.0007 to 0.0020 and nitrogen not over 0.0084; quenched and tempered; with a minimum yield strength of 960 N/mm^2; grain refined; surface treated with a low zinc silicate primer of maximum 12 micrometers; formatted with a square edge; free of scale; guaranteed to a thickness tolerance of one-third of ASTM standards; and guaranteed to a flatness tolerance of 3 mm per mm or better;

(cdxxvi) flat-rolled products of alloy steel, designated as A-729 and entered in an aggregate annual quantity not to exceed 525 t; the foregoing not further worked than hot-rolled; not in coils; of AISI 4142 of plastic mold quality, modified by decreasing phosphorus and sulfur content and increasing manganese content to produce a smoother surface with fewer inclusions; physical properties: width 1050 mm or more; thickness 4.75 mm or more; flatness less than or equal to 3 mm per mm; surface quality in accordance with EN 10 163, Class A; having the following chemical composition (percent by weight): carbon from 0.38 to 0.46, silicon from 0.15 to 0.40, manganese from 0.70 to 1.70, sulfur not over 0.002, chromium from 0.75 to 1.25, molybdenum from 0.15 to 0.30 and vanadium from 0.05 to 0.10; mechanical properties: prehardened (air hardened and tempered) to achieve Brinell hardness of 260 to 310 HB; tensile strength 880 MPa to 1,050 MPa; cleanliness of 2 or better in accordance with ASTM E45-A, including desulfurization to maximum 0.002 percent for high sulfidic cleanliness; vacuum degassing; argon stirring for oxide and sulfide cleanliness; special casting conditions to ensure high oxide cleanliness; ultrasonic testing performed on each plate in accordance with ASTM A 578, supplementary requirements S1 and S9; calcium treatment for inclusion shape control; modified by heat treatment and implementation of a rolling technique applying a rolling force of 11,000 t for high thickness reduction achieving a closely packed structure otherwise achieved only by forging (High Shape Factor Rolling) and resulting in low residual stress and homogeneous hardness distribution;

(cdxxvii) flat-rolled electrolytic tin plate according to ASTM 624-98, designated as A-672 and entered in an aggregate annual quantity not to exceed 3,000 t, the foregoing single reduced with tin coating weight designation #10; with an unmelted coating; with a surface finish between 254 and 635 micrometers; with a chemical treatment yielding to 8,890 to 16,510 micrometers of chromium per 0.3048 square meter of surface; with DOS or ATBC oil applied at a level of 0.10 to 0.30 grams per 66.45 mm^2; with a thickness of 0.167 mm to 0.194 mm; with a steel Type of "MR", a Temper Designation of "T-5" per ASTM A623 with a Non-Reflow Matte Finish Designation of 5C;

(cdxxviii) continuous annealed intersitial free tin plated steel, designated as A-715 and entered in an aggregate annual quantity not to exceed 2,000 t; the foregoing of thickness 0.2290 mm to 0.2950 mm; width 949.71 mm to 959.94 mm; hardness of HR 27T to HR 33T; yield strength 19.0 kg/mm^2 to 29.0 kg/mm^2, tensile strength of 30.0 kg/mm^2 to 40.0 kg/mm^2; having the following chemical composition per ASTM A623, type MR (percent by weight): carbon 0.00225 to 0.00375,

silicon not over 0.02, manganese 0.21 to 0.29, phosphorus not over 0.017, sulfur not over 0.015 LM, chromium not over 0.06 and nickel not over 0.03; with the following other properties: interstitial free vacuum degassed steel; 7C bright finish, coating weight 2.8/2.8 g/m^2 per ASTM A624; surface to be free of defects, imperfections, pits, scratches, rust, cracks, or seams; smooth edges; edge camber maximum 3 mm arc height in 1000 mm; and cross bow of not over 3.00 mm per length or width of 1000 mm; certified by the importer that such products will be slit into two coils of equal widths, each coil having a width of 471.678 mm to 472.033 mm for use in manufacturing of paint trays;

(cdxxix) longitudinally welded tubes of cold-rolled steel, designated as A-623 and entered in an aggregate annual quantity not to exceed 350 t; with the following specifications: outside diameter of 21.87 mm to 22.13 mm; wall thickness of 0.84 mm to 0.92 mm; in any of the following six lengths: (1) 936 mm to 937 mm; (2) 1,033 mm to1,034 mm; (3) 1,150 mm to1,151 mm; (4) 3,929 mm to 3,930 mm; (5) 3,950 mm to 3,951 mm; and (6) 4,205 mm to 4,206 mm; coated on outside diameter only, in two-step process: first, a zinc coating of 6 to 10 mg/m^2, thickness of 8 to 15 microns; and second, a fine uniform layer of corrosion-resistant varnish, thickness of 1 to 3 microns; having the following chemical composition (percent by weight): carbon 0.045 to 0.094, manganese 0.30 to 0.554, sulfur not over 0.20, phosphorus not over 0.20, silicon not over 0.30, aluminum 0.25 to 0.74 and niobium 0.015 to 0.030; carbon equivalent content of 0.120 to 0.185; or

(cdxxx) longitudinally welded tubes of cold-rolled steel, designated as A-623 and entered in an aggregate annual quantity not to exceed 400 t; with the following specifications: length 4,205 mm to 4,206 mm; outside diameter 21.87 mm to 22.13 mm, diameter reduced at one end to 19.2 mm to 19.5 mm, reduction beginning at a maximum of 60 mm from end; wall thickness of 0.84 mm to 0.92 mm; coated on outside diameter only, in two-step process: first, a zinc coating of 6 to 10 mg/m^2, thickness of 8 to 15 microns; second, a fine uniform layer of corrosion-resistant varnish, thickness of 1 to 3 microns; having the following chemical composition (percent by weight): carbon 0.045 to 0.094, manganese 0.30 to 0.554, sulfur not over 0.20, phosphorus not over 0.20, silicon not over 0.30, aluminum 0.25 to 0.74 and niobium 0.015 to 0.030; carbon equivalent content of 0.120 to 0.185."

2. The following new subheadings are inserted in numerical sequence in subchapter III of chapter 99 of the HTS, with the new material being inserted in the columns entitled "Heading/Subheading", "Article Description", "Rate of Duty 1 General", "Rates of Duty 1 Special" and "Rates of Duty 2", respectively:

	[Goods...]			
"9903.75.60	Enumerated in U.S. note 11(c)(ccxiii) to this subchapter	No change	No change	No change
9903.75.62	Enumerated in U.S. note 11(c)(ccxv) to this subchapter, and entered in an aggregate annual quantity not to exceed 15,000 t	No change	No change	No change
9903.75.63	Enumerated in U.S. note 11(c)(ccxvi) to this subchapter, and entered in an aggregate annual quantity not to exceed 3 t	No change	No change	No change
9903.75.64	Enumerated in U.S. note 11(c)(ccxvii) to this subchapter, and entered in an aggregate annual quantity not to exceed 8,000 t	No change	No change	No change
9903.75.65	Enumerated in U.S. note 11(c)(ccxviii) to this subchapter, and entered in an aggregate annual quantity not to exceed 5,000 t	No change	No change	No change
9903.75.66	Enumerated in U.S. note 11(c)(ccxix) to this subchapter, and entered in an aggregate annual quantity not to exceed 4,000 t	No change	No change	No change

	[Goods...]			
9903.75.67	Enumerated in U.S. note 11(c)(ccxx) to this subchapter, and entered in an aggregate annual quantity not to exceed 120 t	No change	No change	No change
9903.75.68	Enumerated in U.S. note 11(c)(ccxxi) to this subchapter	No change	No change	No change
9903.75.69	Enumerated in U.S. note 11(c)(ccxxii) to this subchapter	No change	No change	No change
9903.75.70	Enumerated in U.S. note 11(c)(ccxxiii) to this subchapter	No change	No change	No change
9903.75.71	Enumerated in U.S. note 11(c)(ccxxiv) to this subchapter	No change	No change	No change
9903.75.72	Enumerated in U.S. note 11(c)(ccxxv) to this subchapter	No change	No change	No change
9903.75.73	Enumerated in U.S. note 11(c)(ccxxvi) to this subchapter, and entered in an aggregate annual quantity not to exceed 3,600 t	No change	No change	No change
9903.75.74	Enumerated in U.S. note 11(c)(ccxxvii) to this subchapter, and entered in an aggregate annual quantity not to exceed 930 t	No change	No change	No change
9903.75.75	Enumerated in U.S. note 11(c)(ccxxviii) to this subchapter, and entered in an aggregate annual quantity not to exceed 100 t	No change	No change	No change
9903.75.76	Enumerated in U.S. note 11(c)(ccxxix) to this subchapter	No change	No change	No change
9903.75.77	Enumerated in U.S. note 11(c)(ccxxx) to this subchapter	No change	No change	No change
9903.75.78	Enumerated in U.S. note 11(c)(ccxxxi) to this subchapter	No change	No change	No change
9903.75.79	Enumerated in U.S. note 11(c)(ccxxxii) to this subchapter	No change	No change	No change
9903.75.80	Enumerated in U.S. note 11(c)(ccxxxiii) to this subchapter	No change	No change	No change
9903.75.81	Enumerated in U.S. note 11(c)(ccxxxiv) to this subchapter	No change	No change	No change
9903.75.82	Enumerated in U.S. note 11(c)(ccxxxv) to this subchapter	No change	No change	No change
9903.75.83	Enumerated in U.S. note 11(c)(ccxxxvi) to this subchapter	No change	No change	No change
9903.75.84	Enumerated in U.S. note 11(c)(ccxxxvii) to this subchapter	No change	No change	No change

	[Goods...]		
9903.75.85	Enumerated in U.S. note 11(c)(ccxxxviii) to this subchapter	No change	No change	No change
9903.75.86	Enumerated in U.S. note 11(c)(ccxxxix) to this subchapter	No change	No change	No change
9903.75.87	Enumerated in U.S. note 11(c)(ccxl) to this subchapter	No change	No change	No change
9903.75.88	Enumerated in U.S. note 11(c)(ccxli) to this subchapter	No change	No change	No change
9903.75.89	Enumerated in U.S. note 11(c)(ccxlii) to this subchapter	No change	No change	No change
9903.75.90	Enumerated in U.S. note 11(c)(ccxliii) to this subchapter	No change	No change	No change
9903.75.91	Enumerated in U.S. note 11(c)(ccxliv) to this subchapter	No change	No change	No change
9903.75.92	Enumerated in U.S. note 11(c)(ccxlv) to this subchapter	No change	No change	No change
9903.75.93	Enumerated in U.S. note 11(c)(ccxlvi) to this subchapter	No change	No change	No change
9903.75.94	Enumerated in U.S. note 11(c)(ccxlvii) to this subchapter	No change	No change	No change
9903.75.95	Enumerated in U.S. note 11(c)(ccxlviii) to this subchapter	No change	No change	No change
9903.75.96	Enumerated in U.S. note 11(c)(ccxlix) to this subchapter	No change	No change	No change
9903.75.97	Enumerated in U.S. note 11(c)(ccl) to this subchapter	No change	No change	No change
9903.76.24	Enumerated in U.S. note 11(c)(cclxxvii) to this subchapter	No change	No change	No change
9903.76.25	Enumerated in U.S. note 11(c)(cclxxviii) to this subchapter	No change	No change	No change
9903.76.38	Enumerated in U.S. note 11(c)(ccc) to this subchapter	No change	No change	No change
9903.76.39	Enumerated in U.S. note 11(c)(cdxxvii) to this subchapter, and entered in an aggregate annual quantity not to exceed 3,000 t	No change	No change	No change
9903.76.40	Enumerated in U.S. note 11(c)(cdxxviii) to this subchapter, and entered in an aggregate annual quantity not to exceed 2,000 t	No change	No change	No change
9903.76.81	Enumerated in U.S. note 11(c)(ccci) to this subchapter	No change	No change	No change

	[Goods...]			
9903.76.82	Enumerated in U.S. note 11(c)(cccii) to this subchapter	No change	No change	No change
9903.76.83	Enumerated in U.S. note 11(c)(ccciii) to this subchapter	No change	No change	No change
9903.76.84	Enumerated in U.S. note 11(c)(ccciv) to this subchapter	No change	No change	No change
9903.76.85	Enumerated in U.S. note 11(c)(cccv) to this subchapter	No change	No change	No change
9903.77.03	Enumerated in U.S. note 11(c)(cccxlix) to this subchapter	No change	No change	No change
9903.77.04	Enumerated in U.S. note 11(c)(cccl) to this subchapter	No change	No change	No change
9903.77.05	Enumerated in U.S. note 11(c)(ccccli) to this subchapter	No change	No change	No change
9903.77.06	Enumerated in U.S. note 11(c)(ccccli) to this subchapter	No change	No change	No change
9903.77.07	Enumerated in U.S. note 11(c)(ccccliii) to this subchapter	No change	No change	No change
9903.77.08	Enumerated in U.S. note 11(c)(ccccliv) to this subchapter	No change	No change	No change
9903.77.09	Enumerated in U.S. note 11(c)(ccclv) to this subchapter	No change	No change	No change
9903.77.10	Enumerated in U.S. note 11(c)(ccclvi) to this subchapter	No change	No change	No change
9903.77.11	Enumerated in U.S. note 11(c)(ccclvii) to this subchapter	No change	No change	No change
9903.77.12	Enumerated in U.S. note 11(c)(ccclviii) to this subchapter	No change	No change	No change
9903.77.13	Enumerated in U.S. note 11(c)(ccclix) to this subchapter	No change	No change	No change
9903.77.14	Enumerated in U.S. note 11(c)(ccclx) to this subchapter	No change	No change	No change
9903.77.15	Enumerated in U.S. note 11(c)(ccclxi) to this subchapter	No change	No change	No change
9903.77.16	Enumerated in U.S. note 11(c)(ccclxii) to this subchapter	No change	No change	No change
9903.77.17	Enumerated in U.S. note 11(c)(ccclxiii) to this subchapter	No change	No change	No change

	[Goods...]			
9903.77.18	Enumerated in U.S. note 11(c)(ccclxiv) to this subchapter	No change	No change	No change
9903.77.19	Enumerated in U.S. note 11(c)(ccclxv) to this subchapter	No change	No change	No change
9903.77.20	Enumerated in U.S. note 11(c)(ccclxvi) to this subchapter	No change	No change	No change
9903.77.21	Enumerated in U.S. note 11(c)(ccclxvii) to this subchapter	No change	No change	No change
9903.77.22	Enumerated in U.S. note 11(c)(ccclxviii) to this subchapter	No change	No change	No change
9903.77.23	Enumerated in U.S. note 11(c)(ccclxix) to this subchapter	No change	No change	No change
9903.77.24	Enumerated in U.S. note 11(c)(ccclxx) to this subchapter	No change	No change	No change
9903.77.25	Enumerated in U.S. note 11(c)(ccclxxi) to this subchapter	No change	No change	No change
9903.77.26	Enumerated in U.S. note 11(c)(ccclxxii) to this subchapter	No change	No change	No change
9903.77.27	Enumerated in U.S. note 11(c)(ccclxxiii) to this subchapter	No change	No change	No change
9903.77.28	Enumerated in U.S. note 11(c)(ccclxxiv) to this subchapter, and entered in an aggregate annual quantity not to exceed 5,000 t	No change	No change	No change
9903.77.29	Enumerated in U.S. note 11(c)(ccclxxv) to this subchapter	No change	No change	No change
9903.77.51	Enumerated in U.S. note 11(c)(cdii) to this subchapter	No change	No change	No change
9903.77.79	Enumerated in U.S. note 11(c)(cccxciii) to this subchapter	No change	No change	No change
9903.77.80	Enumerated in U.S. note 11(c)(cccxciv) to this subchapter	No change	No change	No change
9903.77.81	Enumerated in U.S. note 11(c)(cccxcv) to this subchapter	No change	No change	No change
9903.77.82	Enumerated in U.S. note 11(c)(cccxcvi) to this subchapter	No change	No change	No change
9903.77.83	Enumerated in U.S. note 11(c)(cccxcvii) to this subchapter	No change	No change	No change
9903.77.84	Enumerated in U.S. note 11(c)(cccxcviii) to this subchapter	No change	No change	No change

	[Goods...]			
9903.77.87	Enumerated in U.S. note 11(c)(cdxviii) to this subchapter, and entered in an aggregate annual quantity not to exceed 500 t	No change	No change	No change
9903.77.88	Enumerated in U.S. note 11(c)(cdxix) to this subchapter, and entered in an aggregate annual quantity not to exceed 1,500 t	No change	No change	No change
9903.77.89	Enumerated in U.S. note 11(c)(cdxx) to this subchapter, and entered in an aggregate annual quantity not to exceed 180 t	No change	No change	No change
9903.78.16	Enumerated in U.S. note 11(c)(cdi) to this subchapter	No change	No change	No change
9903.78.25	Enumerated in U.S. note 11(c)(ccli) to this subchapter	No change	No change	No change
9903.78.26	Enumerated in U.S. note 11(c)(cclii) to this subchapter	No change	No change	No change
9903.78.27	Enumerated in U.S. note 11(c)(cdxxi) to this subchapter	No change	No change	No change
9903.78.28	Enumerated in U.S. note 11(c)(cdxxii) to this subchapter : No change	No change	No change	
9903.78.29	Enumerated in U.S. note 11(c)(cdxxiii) to this subchapter, and entered in an aggregate annual quantity not to exceed 180 t	No change	No change	No change
9903.78.30	Enumerated in U.S. note 11(c)(cdxxiv) to this subchapter, and entered in an aggregate annual quantity not to exceed 1,000 t	No change	No change	No change
9903.78.31	Enumerated in U.S. note 11(c)(cdxxv) to this subchapter, and entered in an aggregate annual quantity not to exceed 500 t	No change	No change	No change
9903.78.32	Enumerated in U.S. note 11(c)(cdxxvi) to this subchapter, and entered in an aggregate annual quantity not to exceed 525 t	No change	No change	No change
9903.78.40	Enumerated in U.S. note 11(c)(ccliii) to this subchapter	No change	No change	No change
9903.78.41	Enumerated in U.S. note 11(c)(ccliv) to this subchapter	No change	No change	No change
9903.78.42	Enumerated in U.S. note 11(c)(cclv) to this subchapter	No change	No change	No change
9903.78.43	Enumerated in U.S. note 11(c)(cclvi) to this subchapter	No change	No change	No change
9903.78.44	Enumerated in U.S. note 11(c)(cclvii) to this subchapter	No change	No change	No change

	[Goods...]			
9903.78.45	Enumerated in U.S. note 11(c)(cclviii) to this subchapter	No change	No change	No change
9903.78.46	Enumerated in U.S. note 11(c)(cclix) to this subchapter	No change	No change	No change
9903.78.47	Enumerated in U.S. note 11(c)(cclx) to this subchapter	No change	No change	No change
9903.78.48	Enumerated in U.S. note 11(c)(cclxi) to this subchapter, and entered in an aggregate annual quantity not to exceed 8,500 t	No change	No change	No change
9903.78.49	Enumerated in U.S. note 11(c)(cclxii) to this subchapter, and entered in an aggregate annual quantity not to exceed 250 t	No change	No change	No change
9903.78.50	Enumerated in U.S. note 11(c)(cclxiii) to this subchapter, and entered in an aggregate annual quantity not to exceed 250 t	No change	No change	No change
9903.78.51	Enumerated in U.S. note 11(c)(cclxiv) to this subchapter, and entered in an aggregate annual quantity not to exceed 250 t	No change	No change	No change
9903.78.52	Enumerated in U.S. note 11(c)(cclxv) to this subchapter, and entered in an aggregate annual quantity not to exceed 5,000 t	No change	No change	No change
9903.78.53	Enumerated in U.S. note 11(c)(cclxvi) to this subchapter, and entered in an aggregate annual quantity not to exceed 10,000 t	No change	No change	No change
9903.78.54	Enumerated in U.S. note 11(c)(cclxvii) to this subchapter, and entered in an aggregate annual quantity not to exceed 8,000 t	No change	No change	No change
9903.78.55	Enumerated in U.S. note 11(c)(cclxviii) to this subchapter, and entered in an aggregate annual quantity not to exceed 1,000 t	No change	No change	No change
9903.78.56	Enumerated in U.S. note 11(c)(cclxix) to this subchapter, and entered in an aggregate annual quantity not to exceed 1,000 t	No change	No change	No change
9903.78.57	Enumerated in U.S. note 11(c)(cclxx) to this subchapter	No change	No change	No change
9903.78.58	Enumerated in U.S. note 11(c)(cclxxi) to this subchapter	No change	No change	No change
9903.78.59	Enumerated in U.S. note 11(c)(cclxxii) to this subchapter, and entered in an aggregate annual quantity not to exceed 14,500 t	No change	No change	No change
9903.78.60	Enumerated in U.S. note 11(c)(cclxxiii) to this subchapter	No change	No change	No change

	[Goods...:]			
9903.78.61	Enumerated in U.S. note 11(c)(cclxxiv) to this subchapter, and entered in an aggregate annual quantity not to exceed 35,000 t	No change	No change	No change
9903.78.62	Enumerated in U.S. note 11(c)(cclxxv) to this subchapter, and entered in an aggregate annual quantity not to exceed 500 t	No change	No change	No change
9903.78.63	Enumerated in U.S. note 11(c)(cclxxvi) to this subchapter	No change	No change	No change
9903.79.60	Enumerated in U.S. note 11(c)(cclxxix) to this subchapter	No change	No change	No change
9903.79.61	Enumerated in U.S. note 11(c)(cclxxx) to this subchapter	No change	No change	No change
9903.79.62	Enumerated in U.S. note 11(c)(cclxxxi) to this subchapter	No change	No change	No change
9903.79.63	Enumerated in U.S. note 11(c)(cclxxxii) to this subchapter	No change	No change	No change
9903.79.64	Enumerated in U.S. note 11(c)(cclxxxiii) to this subchapter	No change	No change	No change
9903.79.65	Enumerated in U.S. note 11(c)(cclxxxiv) to this subchapter	No change	No change	No change
9903.79.66	Enumerated in U.S. note 11(c)(cclxxxv) to this subchapter	No change	No change	No change
9903.79.67	Enumerated in U.S. note 11(c)(cclxxxvi) to this subchapter	No change	No change	No change
9903.79.68	Enumerated in U.S. note 11(c)(cclxxxvii) to this subchapter	No change	No change	No change
9903.79.69	Enumerated in U.S. note 11(c)(cclxxxviii) to this subchapter	No change	No change	No change
9903.79.70	Enumerated in U.S. note 11(c)(cclxxxix) to this subchapter	No change	No change	No change
9903.79.71	Enumerated in U.S. note 11(c)(ccxc) to this subchapter	No change	No change	No change
9903.79.72	Enumerated in U.S. note 11(c)(ccxci) to this subchapter, and entered in an aggregate annual quantity not to exceed 80,000 t	No change	No change	No change
9903.79.73	Enumerated in U.S. note 11(c)(ccxcii) to this subchapter, and entered in an aggregate annual quantity not to exceed 2.700 t	No change	No change	No change
9903.79.74	Enumerated in U.S. note 11(c)(ccxciii) to this subchapter, and entered in an aggregate annual quantity not to exceed 4,250 t	No change	No change	No change

	[Goods...]			
9903.79.75	Enumerated in U.S. note 11(c)(ccxciv) to this subchapter, and entered in an aggregate annual quantity not to exceed 500 t	No change	No change	No change
9903.79.76	Enumerated in U.S. note 11(c)(ccxcv) to this subchapter, and entered in an aggregate annual quantity not to exceed 3,000 t	No change	No change	No change
9903.79.77	Enumerated in U.S. note 11(c)(ccxcvi) to this subchapter	No change	No change	No change
9903.79.78	Enumerated in U.S. note 11(c)(ccxcvii) to this subchapter, and entered in an aggregate annual quantity not to exceed 2,260 t	No change	No change	No change
9903.79.79	Enumerated in U.S. note 11(c)(ccxcviii) to this subchapter	No change	No change	No change
9903.79.80	Enumerated in U.S. note 11(c)(ccxcix) to this subchapter	No change	No change	No change
9903.80.40	Enumerated in U.S. note 11(c)(cccvi) to this subchapter	No change	No change	No change
9903.80.41	Enumerated in U.S. note 11(c)(cccvii) to this subchapter	No change	No change	No change
9903.80.42	Enumerated in U.S. note 11(c)(cccviii) to this subchapter	No change	No change	No change
9903.80.43	Enumerated in U.S. note 11(c)(cccix) to this subchapter	No change	No change	No change
9903.80.44	Enumerated in U.S. note 11(c)(cccx) to this subchapter	No change	No change	No change
9903.80.45	Enumerated in U.S. note 11(c)(cccxi) to this subchapter	No change	No change	No change
9903.80.46	Enumerated in U.S. note 11(c)(cccxii) to this subchapter	No change	No change	No change
9903.80.47	Enumerated in U.S. note 11(c)(cccxiii) to this subchapter	No change	No change	No change
9903.80.48	Enumerated in U.S. note 11(c)(cccxiv) to this subchapter	No change	No change	No change
9903.80.49	Enumerated in U.S. note 11(c)(cccxv) to this subchapter	No change	No change	No change
9903.80.50	Enumerated in U.S. note 11(c)(cccxvi) to this subchapter	No change	No change	No change
9903.80.51	Enumerated in U.S. note 11(c)(cccxvii) to this subchapter	No change	No change	No change

	[Goods...]			
9903.80.52	Enumerated in U.S. note 11(c)(cccxviii) to this subchapter	No change	No change	No change
9903.80.53	Enumerated in U.S. note 11(c)(cccxix) to this subchapter	No change	No change	No change
9903.80.54	Enumerated in U.S. note 11(c)(cccxx) to this subchapter	No change	No change	No change
9903.80.55	Enumerated in U.S. note 11(c)(cccxxi) to this subchapter	No change	No change	No change
9903.80.56	Enumerated in U.S. note 11(c)(cccxxii) to this subchapter	No change	No change	No change
9903.80.57	Enumerated in U.S. note 11(c)(cccxxiii) to this subchapter	No change	No change	No change
9903.80.58	Enumerated in U.S. note 11(c)(cccxxiv) to this subchapter	No change	No change	No change
9903.80.59	Enumerated in U.S. note 11(c)(cccxxv) to this subchapter	No change	No change	No change
9903.80.60	Enumerated in U.S. note 11(c)(cccxxvi) to this subchapter	No change	No change	No change
9903.80.61	Enumerated in U.S. note 11(c)(cccxxvii) to this subchapter	No change	No change	No change
9903.80.62	Enumerated in U.S. note 11(c)(cccxxviii) to this subchapter	No change	No change	No change
9903.80.63	Enumerated in U.S. note 11(c)(cccxxix) to this subchapter	No change	No change	No change
9903.80.64	Enumerated in U.S. note 11(c)(cccxxx) to this subchapter, and entered in an aggregate annual quantity not to exceed 200 t	No change	No change	No change
9903.80.65	Enumerated in U.S. note 11(c)(cccxxxi) to this subchapter, and entered in an aggregate annual quantity not to exceed 50 t	No change	No change	No change
9903.80.66	Enumerated in U.S. note 11(c)(cccxxxii) to this subchapter, and entered in an aggregate annual quantity not to exceed 80 t	No change	No change	No change
9903.80.67	Enumerated in U.S. note 11(c)(cccxxxiii) to this subchapter, and entered in an aggregate annual quantity not to exceed 100 t	No change	No change	No change
9903.80.68	Enumerated in U.S. note 11(c)(cccxxxiv) to this subchapter, and entered in an aggregate annual quantity not to exceed 9 t	No change	No change	No change
9903.80.69	Enumerated in U.S. note 11(c)(cccxxxv) to this subchapter, and entered in an aggregate annual quantity not to exceed 5 t	No change	No change	No change

	[Goods...]		
9903.80.70	Enumerated in U.S. note 11(c)(cccxxxvi) to this subchapter, and entered in an aggregate annual quantity not to exceed 200 t	No change	No change	No change
9903.80.71	Enumerated in U.S. note 11(c)(cccxxxvii) to this subchapter	No change	No change	No change
9903.80.72	Enumerated in U.S. note 11(c)(cccxxxviii) to this subchapter, and entered in an aggregate annual quantity not to exceed 325 t	No change	No change	No change
9903.80.73	Enumerated in U.S. note 11(c)(cccxxxix) to this subchapter	No change	No change	No change
9903.80.74	Enumerated in U.S. note 11(c)(cccxl) to this subchapter	No change	No change	No change
9903.80.75	Enumerated in U.S. note 11(c)(cccxli) to this subchapter	No change	No change	No change
9903.80.76	Enumerated in U.S. note 11(c)(cccxlii) to this subchapter	No change	No change	No change
9903.80.77	Enumerated in U.S. note 11(c)(cccxliii) to this subchapter	No change	No change	No change
9903.80.78	Enumerated in U.S. note 11(c)(cccxliv) to this subchapter	No change	No change	No change
9903.80.79	Enumerated in U.S. note 11(c)(cccxlv) to this subchapter	No change	No change	No change
9903.80.80	Enumerated in U.S. note 11(c)(cccxlvi) to this subchapter	No change	No change	No change
9903.80.81	Enumerated in U.S. note 11(c)(cccxlvii) to this subchapter	No change	No change	No change
9903.80.82	Enumerated in U.S. note 11(c)(cccxlviii) to this subchapter, and entered in an aggregate annual quantity not to exceed 325 t	No change	No change	No change
9903.80.83	Enumerated in U.S. note 11(c)(cccli) to this subchapter	No change	No change	No change
9903.80.84	Enumerated in U.S. note 11(c)(cclii) to this subchapter	No change	No change	No change
9903.81.00	Enumerated in U.S. note 11(c)(ccclxxvi) to this subchapter	No change	No change	No change
9903.81.01	Enumerated in U.S. note 11(c)(ccclxxvii) to this subchapter	No change	No change	No change
9903.81.02	Enumerated in U.S. note 11(c)(ccclxxviii) to this subchapter	No change	No change	No change
9903.81.03	Enumerated in U.S. note 11(c)(ccclxxix) to this subchapter	No change	No change	No change

	[Goods...]			
9903.81.04	Enumerated in U.S. note 11(c)(ccclxxx) to this subchapter, and entered in an aggregate annual not to exceed 550 t	No change	No change	No change
9903.81.05	Enumerated in U.S. note 11(c)(ccclxxxi) to this subchapter	No change	No change	No change
9903.81.06	Enumerated in U.S. note 11(c)(ccclxxxii) to this subchapter	No change	No change	No change
9903.81.07	Enumerated in U.S. note 11(c)(ccclxxxiii) to this subchapter	No change	No change	No change
9903.81.08	Enumerated in U.S. note 11(c)(ccclxxxiv) to this subchapter	No change	No change	No change
9903.81.09	Enumerated in U.S. note 11(c)(ccclxxxv) to this subchapter	No change	No change	No change
9903.81.10	Enumerated in U.S. note 11(c)(ccclxxxvi) to this subchapter, and entered in an aggregate annual quantity not to exceed 13,000 t	No change	No change	No change
9903.81.11	Enumerated in U.S. note 11(c)(ccclxxxvii) to this subchapter, and entered in an aggregate annual quantity not to exceed 1,700 t	No change	No change	No change
9903.81.12	Enumerated in U.S. note 11(c)(ccclxxxviii) to this subchapter, and entered in an aggregate annual quantity not to exceed 300 t	No change	No change	No change
9903.81.13	Enumerated in U.S. note 11(c)(ccxiv) to this subchapter	No change	No change	No change
9903.81.70	Enumerated in U.S. note 11(c)(ccclxxxix) to this subchapter	No change	No change	No change
9903.81.71	Enumerated in U.S. note 11(c)(cccxc) to this subchapter	No change	No change	No change
9903.81.72	Enumerated in U.S. note 11(c)(cccxci) to this subchapter	No change	No change	No change
9903.81.73	Enumerated in U.S. note 11(c)(cccxcii) to this subchapter	No change	No change	No change
9903.82.10	Enumerated in U.S. note 11(c)(cccxcix) to this subchapter	No change	No change	No change
9903.82.11	Enumerated in U.S. note 11(c)(cd) to this subchapter	No change	No change	No change
9903.82.12	Enumerated in U.S. note 11(c)(cdxii) to this subchapter, and entered in an aggregate annual quantity not to exceed 25 t	No change	No change	No change
9903.82.13	Enumerated in U.S. note 11(c)(cdxiii) to this subchapter	No change	No change	No change

	[Goods...]			
9903.82.14	Enumerated in U.S. note 11(c)(cdxiv) to this subchapter	No change	No change	No change
9903.82.15	Enumerated in U.S. note 11(c)(cdxv) to this subchapter	No change	No change	No change
9903.82.16	Enumerated in U.S. note 11(c)(cdxvi) to this subchapter, and entered in an aggregate annual quantity not to exceed 50 t	No change	No change	No change
9903.82.17	Enumerated in U.S. note 11(c)(cdxvii) to this subchapter, and entered in an aggregate annual quantity not to exceed 20 t	No change	No change	No change
9903.82.90	Enumerated in U.S. note 11(c)(cdiii) to this subchapter	No change	No change	No change
9903.82.91	Enumerated in U.S. note 11(c)(cdiv) to this subchapter	No change	No change	No change
9903.82.92	Enumerated in U.S. note 11(c)(cdv) to this subchapter	No change	No change	No change
9903.82.93	Enumerated in U.S. note 11(c)(cdvi) to this subchapter	No change	No change	No change
9903.82.94	Enumerated in U.S. note 11(c)(cdvii) to this subchapter	No change	No change	No change
9903.82.95	Enumerated in U.S. note 11(c)(cdviii) to this subchapter	No change	No change	No change
9903.82.96	Enumerated in U.S. note 11(c)(cdix) to this subchapter	No change	No change	No change
9903.82.97	Enumerated in U.S. note 11(c)(cdx) to this subchapter	No change	No change	No change
9903.82.98	Enumerated in U.S. note 11(c)(cdxi) to this subchapter	No change	No change	No change
9903.82.99	Enumerated in U.S. note 11(c)(cdxxix) to this subchapter, and entered in an aggregate annual quantity not to exceed 350 t	No change	No change	No change
9903.83.00	Enumerated in U.S. note 11(c)(cdxxx) to this subchapter, and entered in an aggregate annual quantity not to exceed 400 t.	No change	No change	No change"

CONFORMING CHANGES:

Subheading 9903.72.57 is modified by inserting at the end of the article description "and 9903.78.25 through 9903.78.32";

Subheading 9903.72.78 is modified by inserting at the end of the article description "and 9903.78.40 through 9903.78.63";

Subheading 9903.73.01 is modified by deleting "9903.75.59" and by inserting in lieu thereof "9903.75.97";

Subheading 9903.73.18 is modified by deleting "9903.76.23" and by inserting in lieu thereof "9903.76.25", and by inserting at the end of the article description "and 9903.79.60 through 9903.79.80";

Subheading 9903.73.35 is modified by deleting "9903.76.37" and by inserting in lieu thereof "9903.76.40";

Subheading 9903.73.48 is modified by deleting "9903.76.80" and by inserting in lieu thereof "9903.76.85", and by inserting at the end of the article description "and 9903.80.40 through 9903.80.84";

Subheading 9903.73.55 is modified by deleting "9903.77.02" and by inserting in lieu thereof "9903.77.29", and by inserting at the end of the article description "and 9903.81.00 through 9903.81.13";

Subheading 9903.73.65 is modified by inserting at the end of the article description ", as described in subheadings 9903.81.70 through 9903.81.73";

Subheading 9903.73.82 is modified by inserting at the end of the article description "and subheadings 9903.82.90 through 9903.83.00";

Subheading 9903.73.88 is modified by deleting "subheading 9903.77.50" and by inserting in lieu thereof "subheadings 9903.77.50 through 9903.77.51";

Subheading 9903.74.01 is modified by inserting at the end of the article description "and 9903.82.10 through 9903.82.17";

Subheading 9903.74.12 is modified by deleting "9903.77.86" and by inserting in lieu thereof "9903.77.89"; and

Subheading 9903.74.18 is modified by deleting "9903.78.15" and by inserting in lieu thereof "9903.78.16".

[FR Doc. 03–7782 Filed 3–27–03; 1:13 pm]

BILLING CODE 3190–01–C

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending March 21, 2003

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2003–14710.
Date Filed: March 17, 2003.
Parties: Members of the International Air Transport Association.
Subject:
PTC2 AFR 0135 dated March 14, 2003,
Mail Vote 272—Resolution 010a,
TC2 Within Africa Special Passenger Amending Resolution,
Intended effective date: April 15, 2003.

Docket Number: OST–2003–14712.
Date Filed: March 17, 2003.
Parties: Members of the International Air Transport Association.
Subject:
PTC2 ME–AFR 0101 dated March 18, 2003,
Mail Vote 274—Resolution 002cc,
TC2 Middle East-Africa Special Passenger Amending Resolution,
Intended effective date: April 15, 2003.

Docket Number: OST–2003–14719.
Date Filed: March 19, 2003.
Parties: Members of the International Air Transport Association.
Subject:
PTC12 SATL–EUR 0105 dated February 11, 2003,
TC12 South Atlantic-Europe Resolutions r1–r12,
Minutes—PTC12 SATL–EUR 0106 dated March 4, 2003,
Tables—PTC12 SATL–EUR Fares 0028 dated February 14, 2003,
Intended effective date: April 1, 2003.

Docket Number: OST–2003–14720.
Date Filed: March 19, 2003.
Parties: Members of the International Air Transport Association.
Subject:
PTC2 EUR 0500 dated March 21, 2003,
Mail Vote 281—Resolution 010u,
TC2 Within Europe Special Passenger Amending Resolution from Austria to Europe,
PTC2 EUR 0501 dated March 21, 2003,
Mail Vote 283—Resolution 010w,
TC2 Within Europe Special Passenger Amending Resolution from UK to Europe,
PTC2 EUR 0502 dated March 21, 2003,
Mail Vote 275—Resolution 010t,
TC2 Within Europe Special Passenger Amending Resolution from Spain to Europe,
PTC2 EUR 0503—dated March 21, 2003,

Mail Vote 285—Resolution 010x ,
TC2 Within Europe Special Passenger Amending Resolution from Belgium to Europe,
Intended effective dates: March 26, 2003, March 28, 2003, April 1, 2003.

Docket Number: OST–2003–14721.
Date Filed: March 19, 2003.
Parties: Members of the International Air Transport Association.
Subject:
PTC12 MATL–EUR 0075 dated February 11, 2003,
TC12 Mid Atlantic-Europe Resolution r1–r23,
Minutes—PTC12 MATL–EUR 0076 dated March 7, 2003,
Tables—PTC12 MATL–EUR Fares 0024 dated February 14, 2003,
Intended effective date: April 1, 2003.

Docket Number: OST–2003–14722.
Date Filed: March 19, 2003.
Parties: Members of the International Air Transport Association.
Subject:
PTC12 MEX–EUR 0057 dated February 18, 2003,
TC12 North Atlantic Mexico-Europe Resolutions r1–r20,
Minutes—PTC12 MEX–EUR 0058 dated March 11, 2003,
Tables—PTC12 MEX–EUR Fares 0021 dated February 21, 2003,
Intended effective date: May 1, 2003.

Docket Number: OST–2003–14723.
Date Filed: March 19, 2003.
Parties: Members of the International Air Transport Association.
Subject:
PTC12 NMS–ME 0189 dated February 28, 2003,
Mail Vote 267—TC12 Mid Atlantic-Middle East
Resolutions r1–r10,
PTC12 NMS–ME 0190 dated March 4, 2003,
Mail Vote 268—TC12 South Atlantic-Middle East
Resolutions r11–r20,
Minutes—PTC12 NMS–ME 0191 dated March 14, 2003,
Tables—PTC2 NMS–ME Fares 0099 dated February 28, 2003 (Mid Atlantic),
PTC12 NMS–ME Fares 0103 dated March 7, 2003 (South Atlantic),
Intended effective date: April 1, 2003.

Docket Number: OST–2003–14724.
Date Filed: March 19, 2003.
Parties: Members of the International Air Transport Association.
Subject:
PTC12 NMS–ME 0185 dated February 18, 2003,
TC12 North Atlantic-Middle East Resolutions r1–r26,
Minutes—PTC12 NMS–ME 0191 dated March 14, 2003,
Tables—PTC12 NMS–ME Fares 0097 dated February 21, 2003,
Intended effective date: April 1, 2003.

Docket Number: OST–2003–14763.
Date Filed: March 21, 2003.
Parties: Members of the International Air Transport Association.
Subject:
PTC2 EUR 0504 dated March 25, 2003,
Mail Vote 287—Resolution 010z,
TC2 Within Europe Special Passenger Amending Resolution from Morocco to Europe,
PTC2 EUR 0505 dated March 25, 2003,
Mail Vote 288—Resolution 010a,
TC2 Within Europe Special Passenger Amending Resolution from Portugal to Europe,
Intended effective date: April 1, 2003.

Dorothy Y. Beard,
Chief, Docket Operations & Media Management, Federal Register Liaison.
[FR Doc. 03–7657 Filed 3–28–03; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending March 21, 2003

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's procedural regulations (See 14 CFR 301.201 *et. seq.*). The due date for answers, conforming applications, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2003–14773.
Date Filed: March 21, 2003.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 11, 2003.
Description: Application of Primaris Airlines, Inc., pursuant to 49 U.S.C. 41102 and subpart B, requesting a certificate of public convenience and necessity to engage in interstate scheduled air transportation of persons, property, and mail between any point in any State of the United States or the District of Columbia, or any territory or possession of the United States, and any other point in any State of the United States or the District of Columbia, or any territory or possession of the United States.

Docket Number: OST–2003–14774.
Date Filed: March 21, 2003.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 11, 2003.
Description: Application of Primaris Airlines, Inc., pursuant to 49 U.S.C. 41102 and subpart B, requesting a certificate of public convenience and necessity to engage in foreign scheduled air transportation of persons, property, and mail: (a) Between any point in the United States and any point in France; (b) between any point in the United States and any point in the Federal Republic of Germany; (c) between any point in the United States and any point in Canada; and, (d) between Boston and London (Gatwick).

Dorothy Y. Beard,
Chief, Docket Operations & Media Management, Federal Register Liaison.
[FR Doc. 03–7658 Filed 3–28–03; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Change 1 to Advisory Circular 27–1B, Certification of Normal Category Rotorcraft, and Change 1 to Advisory Circular 29–2C, Certification of Transportation Category Rotorcraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of issuance of Advisory Circular (AC) changes.

SUMMARY: The FAA announces the issuances of Change 1 to AC 27–1B, Certification of Normal Category Rotorcraft, and Change 1 to AC 29–2C, Certification of Transport Category Rotorcraft. The changes contain guidance material to bring the AC's up to date with the most recent amendments to 14 Code of Federal Regulations (CFR) parts 27 and 29 and current practices.

DATES: The FAA issued Change 1 to AC 27–1B, Certification of Normal Category Rotorcraft, and Change 1 to AC 29–2C, Certification of Transport Category Rotorcraft, on February 12, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy L. Jones, Rotorcraft Standards Staff, FAA, Rotorcraft Directorate, Aircraft Certification Service, Fort

Worth, TX 76193–0110; telephone (817) 222–5359; fax (817) 222–5961; e-mail: *Kathy.L.Jones@FAA.GOV.* Both of the AC's, with Change 1 incorporated, are available on the Internet at the following address: *http://www.airweb.faa.gov/rgl.* If you do not have access to the Internet, you may request a copy by contacting the individual listed in this section. In the rear future, the Government Printing Office (GPO) will issue a paper coy of Change 1 to both AC's.

SUPPLEMENTARY INFORMATION: The FAA published a notice in the **Federal Register** on July 26, 2001 (66 FR 39074) that announced the availability of the proposed changes and invited interested parties to comment.

Issued in Fort Worth, Texas, on March 20, 2003.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–7676 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–13]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 21, 2003.

ADDRESSES: Send comments on the petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–14148 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Madeleine Kolb (425–227–1134), Transport Airplane Directorate (ANM–113), Federal Aviation Administration, 1601 Lind Ave, SW., Renton, WA 98055–4056; or Vanessa Wilkins (202–267–8029), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on March 26, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations,

Petitions for Exemption

Docket No.: FAA–2002–14148.

Petitioner: Embraer.

Section of 14 CFR Affected: 14 CFR 25.901(c).

Description of Relief Sought: Exemption for Embraer ERJ–170 series airplanes from 14 CFR 25.901(c), with regard to certain extremely remote powerplant control system failures that could affect only a very limited area of the flight envelope.

[FR Doc. 03–7668 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–14]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 21, 2003.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–200X–XXXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mike Brown, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–7653.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on March 26, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–13581.

Petitioner: TransNorthern, LLC.

Section of 14 CFR Affected: 14 CFR part 43.3.

Description of Relief Sought: To permit TNA pilots who have completed approved TNA training to (1) remove and reinstall passenger seats and (2) replenish hydraulic fluid in the hydraulic reservoir of Douglas R4D–8Z aircraft operated by TNA.

Docket No.: FAA–2002–12365.

Petitioner: Mr. David J. Flock.

Section of 14 CFR Affected: 14 CFR parts 43.3, 43.7, and 43.9.

Description of Relief Sought: To permit the petitioner to install and remove Union Aviation Incorporated hand controls on Cessna model 172, 177, and 182 aircraft without holding an FAA-approved mechanic's certificate. The exemption would also allow the petitioner to approve the aircraft for return to service after such an alteration without making logbook entries regarding the alterations.

[FR Doc. 03–7669 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–15]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 21, 2003.

ADDRESSES: Send comments on the petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–14013 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Madeleine Kolb (425–227–1134), Transport Airplane Directorate (ANM–113), Federal Aviation Administration, 1601 Lind Ave SW., Renton, WA 98055–4056; or Vanessa Wilkins (202–267–8029), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on March 26, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–14013.

Petitioner: Embraer.

Section of 14 CFR Affected: 14 CFR 25.841(a)(2)(ii).

Description of Relief Sought: Exemption of EMBRAER ERJ–170 airplanes from 14 CFR 25.841(a)(2)(ii) affected by cabin altitude exceeding 40,000 feet following a rare event of an uncontained engine rotor burst hitting the pressurized cabin.

[FR Doc. 03–7670 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–16]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice for the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before [insert date 20 days after date of publication].

ADDRESSES: Send comments on the petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002-14148 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comment, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Madeleine Kolb (425–227–1134), Transport Airplane Directorate (ANM–113), Federal Aviation Administration, 1601 Lind Ave SW., Renton, WA 98055–4056; or Vanessa Wilkins (202–267–8029), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC., on March 26, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–14148.

Petitioner: Embraer.

Section of 14 CFR Affected: 14 CFR 25.901(c).

Description of Relief Sought: Exemption for EMBRAER ERJ–170 series airplanes from 14 CFR 25.901(c), with regard to certain extremely remote powerplant control system failures that could affect only a very limited area of the flight envelope.

[FR Doc. 03–7671 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Research, Engineering and Development (R,E&D) Advisory Committee

AGENCY: Federal Aviation Administration.

ACTION: Notice of meeting.

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the FAA Research, Engineering and Development (R,E&D) Advisory Committee.

Name: Research, Engineering & Development Advisory Committee.

Time and Date: April 29—9 a.m.–5 p.m.; April 30—9 a.m.–5 p.m.

Place: Federal Aviation Administration—Bessie Coleman Room 800 Independence Avenue, SW., Washington, DC.

Purpose: On April 29–30 from 9 a.m.–5 p.m. the meeting agenda will include receiving from the Committee guidance for FAA's research and development investments in the areas of air traffic services, airports, aircraft safety, security, human factors and environment and energy.

Attendance is open to the interested public but seating is limited. Persons wishing to attend the meeting or obtain information should contact Gloria Dunderman at the Federal Aviation Administration, AAR–200, 800 Independence Avenue, SW., Washington, DC 20591 (202) 267–8937 or *gloria.dunderman@faa.gov.* All attendees will be required to sign-in at security, provide picture ID and be escorted to the meeting room.

Members of the public may present a written statement to the Committee at any time.

Issued in Washington, DC on March 18, 2003.

Herman A. Rediess,

Director, Office of Aviation Research.

[FR Doc. 03–7551 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Charter Renewal, RTCA, Inc. (Utilized as an Advisory Committee)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Charter renewal.

SUMMARY: The FAA is issuing this notice to advise the public of the renewal of the RTCA Charter (FAA Order 1110.77P) for two years, effective March 13, 2003. The Administrator is the sponsor of the committee. The objective of the advisory committee is to seek solutions to problems involving applied technology (for example, electronics, computers, and telecommunications) to aeronautical operations that impact the future air traffic management system. The solutions are often about recommended minimum operational performance standards and technical guidance documents that are acceptable to government, industry, and users. Standards ensure equivalent performance of the same generic equipment built by different manufacturers. Government regulatory and procurement practices reference or use RTCA standards (with or without change). The Secretary of Transportation has determined that the information and use of the committee are necessary in the public interest in connection with the performance of duties imposed on the FAA by law.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*, or the FAA Office of System Architecture and Investment Analysis (ASD–1), 800 Independence Avenue, SW., Washington, DC, telephone (202) 385–7100; fax (202) 385–7105.

SUPPLEMENTARY INFORMATION: Steering Committee and Special Committee meetings are open to the public and announced in the **Federal Register**, except as authorized by section 10(d) of the Federal Advisory Committee Act.

Issued in Washington, DC, on March 20, 2003.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 03–7665 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 03–02–C–00–MCW To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Mason City Municipal Airport, Mason City, IA

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Mason City Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before April 15, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 901 Locust Street, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Pamela Osgood, Interim Airport Manager, Mason City Municipal Airport, at the following address: Mason City Municipal Airport, P.O. Box 2585, Mason City, IA 50402.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Mason City Municipal Airport, Mason City, Iowa, under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Lorna Sandridge, PFC Program Manager, FAA, Central Region, 901 Locust Street, Kansas City, MO 64106, (816) 329–2641. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Mason City Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On March 21, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Mason City Airport Commission, Mason City, Iowa, was substantially complete within the requirements of § 158.25 fo part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 19, 2003.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: July, 2003.

Proposed charge expiration date: April, 2009.

Total estimated PFC revenue: $379,500.

Brief description of proposed project(s): Runway safety area improvements; runway edge drains, phase 2; reconstruct terminal and

general aviation ramps; reconstruct terminal restrooms; aircraft passenger lift; replace windcone and install supplemental windcone; update airport master plan; rehabilitate Runway 17/35 (design); acquire land in runway protection zone; PFC consultation services.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Mason City Municipal Airport. Issued in Kansas City, Missouri on March 21, 2003.

Jim Johnson,

Acting Manager, Airports Division, Central Region.

[FR Doc. 03–7675 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2003–14794]

Proposed Guidance for the Use of Binding Arbitration Under the Administrative Dispute Resolution Act of 1996

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT

ACTION: Notice of proposed guidance; Request for comments.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA), a modal administration within the U.S. Department of Transportation (DOT), proposes to use the alternative dispute resolution (ADR) technique of binding arbitration in civil penalty forfeiture proceedings in which the only issues remaining to be resolved are: (1) The amount of the civil penalty owed, and (2) the length of time in which to pay it. FMCSA will *not* agree to arbitrate maximum penalty cases issued pursuant to section 222 of the Motor Carrier Safety Improvement Act of 1999, or any cases that require interpretation of the regulations or analysis of important policy issues. FMCSA intends to implement binding arbitration immediately upon publication of this notice. Binding arbitration will be implemented to provide more efficient and effective resolution of the large volume of adjudication cases that are now before FMCSA's Chief Safety Officer. In accordance with section 575(c) of the Administrative Dispute Resolution Act of 1996, FMCSA has submitted this Guidance to the Attorney General for consultation. The Attorney General concurs in the issuance of this Guidance. Changes to the arbitration program may be made, however, in accordance with any comments or information received by FMCSA concerning implementation of binding arbitration.

DATES: Comments must be received on or before May 30, 2003.

ADDRESSES: You may mail, fax, hand deliver or electronically submit written comments on the Guidance to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 7th Street, SW., Washington, DC 20590–0001, FAX (202) 493–2251, on-line at *http://dms.dot.gov/submit.* Please include the docket number that appears in the heading of this document in your submission. Comments may be examined at the Dockets Management Facility from 9 a.m. to 5 p.m., Eastern Standard Time, Monday through Friday, except Federal holidays. You may also view all comments or download an electronic copy of this document from the DOT Docket Management System (DMS) at *http://dms.dot.gov/search.htm* and by typing the last five digits of the docket number appearing at the heading of this document. The DMS is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the ''help'' section of the web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments on-line.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Steven B. Farbman, (202) 385–2351, Federal Motor Carrier Safety Administration, Adjudications Counsel, 400 7th Street, SW., Washington, DC 20590. Office hours are from 9 a.m. to 5:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in finalizing this Guidance by submitting such written comments, views, or arguments as they may desire. All comments received will be included in the docket and available for public inspection before and after the comment closing date. All comments received on or before the closing date will be considered by FMCSA. Late-filed comments will be considered to the extent practicable. The Guidance referenced in this notice may be changed in light of the comments received.

Availability of the Guidance

This notice and request for comments merely identifies the Guidance. A complete copy of the Guidance has been placed in the public docket. The docket may be accessed at the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 7th Street, SW., Washington, DC 20590–0001, or on-line at *http://dms.dot.gov.* The docket number is provided at the beginning of this Notice.

Background

In the Administrative Dispute Resolution Act of 1996 (ADRA) (Pub. L. 104–320, 110 Stat.3870 (October 19, 1996) (now codified at 5 U.S.C. 571–583)), Congress authorizes Federal agencies to utilize binding arbitration to resolve administrative disputes, provided that conditions specified in the ADRA are satisfied. Among other things, the ADRA requires interested agencies to develop and issue guidance on the appropriate use of arbitration. FMCSA has posted its Guidance at *http://www.fmcsa.dot.gov* as well as in the docket for this Notice at *http://dms.dot.gov* and is implementing binding arbitration in civil penalty forfeiture proceedings in which the only issues remaining to be resolved are the amount of the civil penalty owed and the length of time in which to pay it. The Chief Safety Officer will determine if a case is appropriate for arbitration and notify the parties in writing that the case will be referred to arbitration with the consent of both parties. A detailed explanation of the notification and consent process is provided in the Guidance. Cases requiring interpretation of the regulations or analysis of important policy issues will *not* be selected for binding arbitration. FMCSA will immediately modify or terminate the use of binding arbitration if there is reason to believe that continuing it is inconsistent with the goals and objectives of the safety regulations.

In accordance with section 575 of the ADRA, FMCSA's Guidance for use of binding arbitration to resolve civil penalty disputes was developed in consultation with the Attorney General. FMCSA has been informed by the Department of Justice (DOJ) that the Attorney General concurs in the Guidance and implementation of binding arbitration.

The Guidance satisfies the requirements regarding binding arbitration specified by section 575 of the ADRA of 1996, and addresses use of binding arbitration in a manner consistent with FMCSA's dispute resolution process and its procedural rules of practice at 49 CFR part 386.

Issued: March 24, 2003.

Annette M. Sandberg,

Acting Administrator.

[FR Doc. 03–7656 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2003–14804]

Notice of Request for the Extension of Currently Approved Information Collections

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to extend the following currently approved information collections: Bus Testing Program.

DATES: Comments must be submitted before May 30, 2003.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the United States Department of Transportation, Central Dockets Office, PL–401, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 10 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

FOR FURTHER INFORMATION CONTACT: Mr. Marcel Bellanger, Office of Research, Demonstration and Innovation, (202) 366–0725.

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of these information collections, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB reinstatement of this information collection.

Title: Bus Testing Program (*OMB Number: 2132–0550*).

Background: 49 U.S.C. 5323(c) provides that no federal funds appropriated or made available after September 30, 1989, may be obligated or expended for the acquisition of a new bus model (including any model using alternative fuels) unless the bus has been tested at the Bus Testing Center (Center) in Altoona, Pennsylvania. 49 U.S.C. 5318(a) further specifies that each new bus model is to be tested for maintainability, reliability, safety, performance (including braking performance), structural integrity, fuel economy, emissions, and noise.

The operator of the Bus Testing Center, the Pennsylvania Transportation Institute (PTI), has entered into a cooperative agreement with FTA. PTI operates and maintains the Center, and establishes and collects fees for the testing of the vehicles at the facility. Upon completion of the testing of the vehicle at the Center, a test report is provided to the manufacturer of the new bus model. The bus manufacturer certifies to an FTA grantee that the bus the grantee is purchasing has been tested at the Center. Also, grantees about to purchase a bus use this report to assist them in making their purchasing decisions. PTI maintains a reference file for all the test reports which are made available to the public.

Respondents: Bus manufacturers.

Estimated Annual Burden on Respondents: 3½ hours for each of the 15 bus manufacturers.

Estimated Total Annual Burden: 53 hours.

Frequency: Annual.

Issued: March 26, 2003.

Timothy B. Wolgast,

Acting Associate Administrator for Administration.

[FR Doc. 03–7659 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2001–8827; Notice 3]

Dan Hill and Associates, Inc.; Red River Manufacturing; Receipt of Application for Renewal of Temporary Exemptions From Federal Motor Vehicle Safety Standard No. 224

We are asking for comments on the application by Dan Hill and Associates, Inc. (''Dan Hill''), of Norman, Oklahoma, and by Red River Manufacturing (''Red River'') of West Fargo, North Dakota, for a renewal of their temporary exemptions from Motor Vehicle Safety Standard No. 224, *Rear Impact Protection.* Dan Hill asserts that compliance would cause substantial economic hardship to manufacturers that have tried in good faith to comply with the standard. Red River argues that absent an exemption it would be otherwise unable to sell a vehicle whose overall level of safety or impact protection is at least equal to that of a nonexempted vehicle.

We are publishing this notice of receipt of the applications in accordance with our regulations on the subject. This action does not mean that we have made a judgment yet about the merits of the application.

Dan Hill and Red River have been the beneficiaries of temporary exemptions from Standard No. 224, and renewals of exemptions, from January 26, 1998, to April 1, 2003 (for **Federal Register** notices granting the petitions by Dan Hill, *see* 63 FR 3784 and 64 FR 49047; by Red River, *see* 63 FR 15909 and 64 FR 49049; for the most recent grant applicable to both petitioners, *see* 66 FR 20028). The information below is based on material from the petitioners' original and renewal applications of 1998, 1999, 2001, and their most recent applications.

Dan Hill and Red River filed their petitions at least 60 days before the expiration of their existing exemption. Thus, pursuant to 49 CFR 555.8(e), their current exemptions will not expire until we have made a decision on the current requests.

The Petitioners' Reasons Why They Continue To Need an Exemption

Dan Hill. Dan Hill manufactures and sells horizontal discharge semi-trailers (Models ST–1000, CB–4000, and CB–5000, collectively referred to as ''Flow Boy'') that are used in the road construction industry to deliver asphalt and other road building materials to the construction site. The Flow Boy is designed to connect with and latch onto

various paving machines (''pavers''). The Flow Boy, with its hydraulically controlled horizontal discharge system, discharges hot mix asphalt at a controlled rate into a paver which overlays the road surface with asphalt material.

Standard No. 224 requires, effective January 26, 1998, that all trailers with a GVWR of 4536 kg or more, including Flow Boy trailers, be fitted with a rear impact guard that conforms to Standard No. 223 *Rear Impact Guards.* Dan Hill argued that installation of the rear impact guard will prevent the Flow Boy from connecting to the paver. Thus, Flow Boy trailers will no longer be functional. Paving contractors will be forced to use either competitors' horizontal discharge trailers that comply with Standard No. 224 or standard dump body trucks or trailers which, according to Dan Hill, have inherent limitations and safety risks. In spite of continued exemptions since the effective date of the standard, Dan Hill avers that it has been unable to engineer its trailers to conform. Dan Hill and Red River jointly filed a petition for rulemaking with NHTSA to amend Standard No. 224 to exclude horizontal discharge trailers. The petition was filed on March 23, 2001. Dan Hill requests an exemption of two years with the hope that the petition will be granted and rulemaking completed by April 1, 2005. We discuss below its efforts to conform in greater detail.

Red River. Red River has previously applied for exemptions on the basis that compliance would cause it substantial economic hardship. The company now applies for an exemption on the basis that absent an exemption it would be otherwise unable to sell a vehicle whose overall level of safety is at least equal to that of a nonexempted motor vehicle. Red River believes ''petitioning on the basis of equal overall safety ([49 CFR] 555.6(d)) is more appropriate because Red River is now part of a larger family of companies and because the merits of Red River's requested renewal of its exemption under § 555.6(d) are straightforward and clear.'' Red River references its continuing but unsuccessful efforts to develop a means to conform its horizontal discharge trailers to Standard No. 224, and its petition for ameliorative rulemaking, filed jointly with Dan Hill.

Dan Hill's Reasons Why It Believes That Compliance Would Cause It Substantial Economic Hardship and That It Has Tried in Good Faith To Comply With Standard No. 224

Dan Hill is a small volume manufacturer. Its total production in the 12-month period preceding its latest petition was 55 units, a substantial decline from the 151 units reported in the petition preceding the current one. In the absence of a further exemption, Dan Hill asserts that the majority of its ''work force in the Norman, Oklahoma plant would be laid off resulting in McClain County losing one of its largest single employers.'' If the exemption were not renewed, Dan Hill's gross sales in 2003 would decrease by approximately $5,526,522. Its cumulative net income after taxes for the fiscal years 2000, 2001, and 2002 was $271,058. It projects a net income of $46,267 for fiscal year 2003.

The **Federal Register** notices cited above contain Dan Hill's arguments of its previous good faith efforts to conform with Standard No. 224 and formed the basis of our previous grants of Dan Hill's petitions. Dan Hill originally asked for a year's exemption in order to explore the feasibility of a rear impact guard that would allow the Flow Boy trailer to connect to a conventional paver. It concentrated its efforts between 1998 and 1999 in investigating the feasibility of a retractable rear impact guard, which would enable Flow Boys to continue to connect to pavers. The company examined various alternatives: Installation of a fixed rear impact guard, redesign of pavers, installation of a removable rear impact guard, installation of a retractable rear impact guard, and installation of a ''swing-up'' style tailgate with an attached bumper. Its efforts to conform, from September 1999 until December 2000, involved the design of a swing-in retractable rear impact guard. A review of its design, by Tech, Inc., showed that this, too, was not feasible. Among other things, Tech, Inc., was concerned that ''the tailgate, hinges, and air cylinders will not meet the criteria of the Standard 224-plasticity requirement,'' and that ''the bumper is a potential safety hazard'' because if the gate were raised and ''a flagman or a trailer stager is in between the paver and the bumper while the gate and bumper is rising, the bumper could cause serious injury or death.'' A copy of Tech Inc.'s report has been filed in the docket as part of Dan Hill's 2001 petition. The report also indicated that the costs associated with this design may be cost prohibitive ''when trying to win business in a highly competitive, yet narrow marketplace.'' Having concluded that compliance of horizontal discharge trailers with Standard No. 224 was unattainable, Dan Hill filed the petition for permanent relief through rulemaking, mentioned above.

Red River's Reasons Why Compliance Would Preclude Sale of Its Horizontal Discharge Trailers and Why These Trailers Provide an Overall Level of Safety at Least Equal to That of Nonexempted Trailers

Under 49 U.S.C. 30113(b)(3)(B)(iv), as implemented by 49 CFR 555.6(d), we may grant a temporary exemption on finding that compliance with Standard No. 224 ''would prevent the manufacturer from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempt vehicles.''

A requirement that its horizontal discharge trailers comply with Standard No. 224 would preclude their sale, according to Red River. The petitioner discusses a range of options using fixed and retractable guards, concluding that ''the design and manufacturing problems associated with the development of a retractable rear impact guard for construction horizontal discharge trailers are enormous—perhaps, even insurmountable.

Nonexempted trailers are equipped with rear underride guards. Red River's horizontal discharge trailers will not be equipped with these guards, but, in Red River's opinion, an equivalent level of safety exists because the geometry of these trailers is similar to that of ''wheels-back'' trailers that are specifically exempted from Standard No. 224. Further, if measurements were based ''on the traditional dry van approach, and a plane was passed through the rear door and rear frame of the Red River trailers, the plane would be less than six inches beyond the rear tire.''

In addition, according to Red River, the design affords protection against passenger compartment intrusion in rear-end collisions in that the maximum forward movement of a motor vehicle involved in a rear-end collision is 24 inches; it is not likely that any part of the trailer would strike the colliding vehicle's windshield.

Red River notes that the trailer beds of end dump trailers have to be raised in order for their cargo to be off-loaded by gravity, contrasted with the more controlled discharge of cargo by horizontal discharge trailers. Further, use of end dump trailers is problematic on uneven terrain or where overhead obstacles such as bridges and power lines are present.

For all these reasons, Red River submits that its horizontal discharge trailers have an overall level of safety at least equal to that of end dump trailers that comply with Standard No. 224.

Arguments Presented by Dan Hill and Red River Why a Renewal of Their Temporary Exemptions Would Be in the Public Interest and Consistent With Objectives of Motor Vehicle Safety

Dan Hill. Dan Hill previously argued that an exemption would be in the public interest and consistent with traffic safety objectives because, without an exemption, ''within a short time, production of the trailer will cease entirely. This would mean a significant loss to many people in the state, including shareholders, lenders, employees, families, and other stakeholders.'' The amount of time actually spent on the road is limited because of the need to move the asphalt to the job site before it hardens. Dan Hill also cited its efforts before 2001 to enhance the conspicuity of Flow Boy trailers by: 1. Adding ''High intensity flashing safety lights; 2. doubling the legally required amount of conspicuity taping at the rear of the trailer; 3. [adding] safety signage; 4. [adding] red clearance lights that normally emit light in twilight or night-time conditions; and 5. installation of a rear under-ride protection assembly 28″ above the ground and 60″ in width.''

With respect to the current petition, Dan Hill concludes that ''the general public benefits from better and improved roads as a result of the horizontal discharge method of delivering and discharging hot mix asphalt and other road building materials.'' It also asserts that ''contractors benefit from the discharge system because they operate more efficiently, [and] experience greater safety records which results in lower costs.'' Such trailers ''present a safe alternative to the standard dump body truck or trailer'' because ''the location of the rear-most axle of the Flow Boy causes its rear tires to act as a buffer and limits the maximum forward movement of a motor vehicle involved in a rear-end collision with a horizontal discharge trailer * * *.''

Red River. Red River argues that, ''because of the functionality and safety of Red River's construction horizontal discharge trailers, the exemption requested here would be in the public interest.''

According to Red River, an exemption would be consistent with considerations of safety as well. The trailers spend a large portion of their operating time off the public roads. Further, ''typical hauls are short and have a minimal amount of highway time when compared with other semi-trailers.'' As noted above, Red River knows of no rear end collisions involving this type of trailer that has resulted in injuries.

How You May Comment on the Applications by Dan Hill and Red River

If you would like to comment on the applications, please do so in writing, in duplicate, referring to the docket and notice number, and mail to: Docket Management, National Highway Traffic Safety Administration, room PL–401, 400 Seventh Street, SW., Washington, DC 20590.

We shall consider all comments received before the close of business on the date indicated below. Comments are available for examination in the docket in room PL–401 both before and after that date, between the hours of 10 a.m. and 5 p.m. To the extent possible, we also consider comments filed after the closing date. We will publish our decision on the application, pursuant to the authority indicated below.

Comment closing date: April 30, 2003.

Authority: 49 U.S.C. 30113; delegations of authority at 49 CFR 1.50 and 501.4.

Issued on March 26, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–7655 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 03–14758]

Grant of Applications of Two Motorcycle Manufacturers for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 123

This notice grants the applications by two motorcycle manufacturers for a temporary exemption of two years from a requirement of S5.2.1 (Table 1) of Federal Motor Vehicle Safety Standard No. 123 *Motorcycle Controls and Displays.* The applicants assert that ''compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall level of safety at least equal to the overall safety level of nonexempt vehicles,'' 49 U.S.C. 30113(b)(3)(iv).

The manufacturers who have applied for a temporary exemption are Malaguti USA, Miami, Florida, on behalf of Malaguti S.p.A. of Bologna, Italy, and Yamaha Motor Corporation USA of Cypress, California. Malaguti's petition covers four vehicles it describes as ''motor scooters:'' the Phantom 200cc, the Madison 200cc and 400cc, and the B–2 500cc. Yamaha seeks relief for its Vino 125 (125cc) machine.

Because the safety issues are identical we have decided to address both the petitions in a single notice. Further, given the opportunity for public comment on these issues in the years 1998–2002 (which resulted only in comments in support of the petitions), we have concluded that a further opportunity to comment on the same issues is not likely to result in any substantive submissions, and that we may proceed to decisions on these petitions. See, *e.g.*, most recently the grant of applications by five motorcycle manufacturers (67 FR 62850).

The Reason Why the Applicants Need a Temporary Exemption

The problem is one that is common to the motorcycles covered by the applications. If a motorcycle is produced with rear wheel brakes, S5.2.1 of Standard No. 123 requires that the brakes be operable through the right foot control, although the left handlebar is permissible for motor-driven cycles (Item 11, Table 1). Motor-driven cycles are motorcycles with motors that produce 5 brake horsepower or less. Malaguti and Yamaha petitioned to use the left handlebar as the control for the rear brakes of certain of their motorcycles whose engines produce more than 5 brake horsepower. The frame of each of these motorcycles has not been designed to mount a right foot operated brake pedal (*i.e.,* these scooter-type vehicles which provide a platform for the feet and operate only through hand controls). Applying considerable stress to this sensitive pressure point of the frame could cause failure due to fatigue unless proper design and testing procedures are performed.

Absent an exemption, the manufacturers will be unable to sell the motorcycle models named above because the vehicles would not fully comply with Standard No. 123.

Arguments Why the Overall Level of Safety of the Vehicles To Be Exempted Equals or Exceeds That of Non-Exempted Vehicles

As required by statute, the petitioners have argued that the overall level of safety of the motorcycles covered by their petitions equals or exceeds that of a non-exempted motor vehicle for the following reasons. All vehicles for which petitions have been submitted are equipped with an automatic transmission. As there is no foot-operated gear change, the operation and use of a motorcycle with an automatic transmission is similar to the operation and use of a bicycle, and the vehicles

can be operated without requiring special training or practice.

Malaguti stated that it has ''independent U.S. lab test data by an NHTSA approved lab as well as European Union TUV testing, and Malaguti factory testing data proving that the phantom 200cc, Madison 200cc, Madison 400cc, and B–2 500cc motor scooters exceed the requirements in FMVSS No. 123.'' It asserted that all four models ''meet the braking requirements of ECE 93/14 as well.''

Yamaha identified itself as ''the importer and distributor of Yamaha brand motor vehicles produced by a host of Yamaha affiliates throughout the world.''

Arguments Why an Exemption Would Be in the Public Interest and Consistent With the Objectives of Motor Vehicle Safety

In Malaguti's opinion, its scooters provide a ''much more natural braking response by the rider than non-exempted vehicles.'' The exemption would also be in the public interest ''because Malaguti is promoting environmentally clean and efficient urban transportation.''

Yamaha simply concludes that its ''request is consistent with the intent of the National Traffic and Motor Vehicle Safety Act.''

NHTSA's Decisions on the Applications and Request

It is evident that, unless Standard No. 123 is amended to permit or require the left handlebar brake control on motor scooters with more than 5 hp, the petitioners will be unable to sell their motorcycles if they do not receive a temporary exemption from the requirement that the right foot pedal operate the brake control. It is also evident from the previous grants of similar petitions that we have repeatedly found that the motorcycles exempted from the brake control location requirement of Standard No. 123 have an overall level of safety that equals or exceeds that of nonexempted motorcycles.

Malaguti's public interest and safety arguments are similar to those of other petitioners, which we have found sufficient, regarding braking response and the effect of an exemption in enhancing the environment and urban transportation. We note that Yamaha made no public interest argument or provided support for its conclusion that an exemption would be consistent with the purposes of the Vehicle Safety Act. However, the exemption requested is not one of first impression, and the arguments of other petitioners support public interest and safety findings applicable to the Yamaha Vino as well.

In consideration of the foregoing, we hereby find that the petitioners have met their burden of persuasion that to require compliance with Standard No. 123 would prevent these manufacturers from selling a motor vehicle with an overall level of safety at least equal to the overall safety level of nonexempt vehicles. We further find that a temporary exemption is in the public interest and consistent with the objectives of motor vehicle safety. Therefore:

1. Malaguti S.p.A. is hereby granted NHTSA Temporary Exemption No. EX03–1 from the requirements of item 11, column 2, table 1 of 49 CFR 571.123 Standard No. 123 *Motorcycle Controls and Displays,* that the rear wheel brakes be operable through the right foot control. This exemption covers only the Phantom 200cc, Madison 200cc, Madison 400cc, and B–2 500cc models and expires on March 1, 2005.

2. Yamaha Motor Corporation USA is hereby granted NHTSA Temporary Exemption No. EX03–2 from the requirements of item 11, column 2, table 1 of 49 CFR 571.123 Standard No. 123 *Motorcycle Controls and Displays,* that the rear wheel brakes be operable through the right foot control. This exemption covers only the Vino 125 model and expires on March 1, 2005.

(49 U.S.C. 30113; delegation of authority at 49 CFR 1.50).

Issued on March 26, 2003.

Jeffrey W. Runge,

Administrator.

[FR Doc. 03–7654 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 646]

Rail Rate Challenges in Small Cases

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of public hearing.

SUMMARY: The Surface Transportation Board (Board) will hold a public hearing on Wednesday, April 16, 2003, at its offices in Washington, DC, to provide interested persons an opportunity to express their views on the subject of Board processing of rail rate challenges that are not suitable for handling under the Board's constrained market pricing procedures. Persons wishing to speak at the hearing should notify the Board in writing.

DATES: The public hearing will take place on Wednesday, April 16, 2003. Any person wishing to speak at the hearing should file with the Board a written notice of intent to participate, and should indicate a requested time allotment, as soon as possible but no later than April 8, 2003. Each speaker should also file with the Board his/her written testimony by April 11, 2003.

ADDRESSES: An original and 10 copies of all notices of intent to participate and testimony should refer to STB Ex Parte No. 646, and should be sent to: Surface Transportation Board, Attn: STB Ex Parte No. 646, 1925 K Street, NW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION, CONTACT: Beryl Gordon, (202) 565–1616. [Federal Information Relay Service (FIRS) (Hearing Impaired): (800) 877–8339.]

SUPPLEMENTARY INFORMATION: The Board will hold a public hearing to provide a forum for the expression of views by rail shippers, railroads, and other interested persons, regarding rail rate challenges in small cases to be considered by the Board. This hearing will provide a forum for the oral discussion of any proposals that interested persons might wish to offer for handling small cases involving a challenge to the reasonableness of rates charged by a rail carrier. The Board is also interested in participants' views on how small rate cases should be defined or identified.

Date of Hearing

The hearing will begin at 10:00 a.m. on Wednesday, April 16, 2003, in the 7th floor hearing room at the Board's headquarters in Washington, DC, and will continue, with short breaks if necessary, until every person scheduled to speak has been heard.

Notice of Intent To Participate

Any person wishing to speak at the hearing should file with the Board a written notice of intent to participate, and should indicate a requested time allotment, as soon as possible but no later than April 8, 2003.

Testimony

Each speaker should file with the Board his/her written testimony by April 11, 2003.

Paper Copies

Each person intending to speak at the hearing should submit an original and 10 paper copies of his/her notice of intent to participate (as soon as possible but no later than April 8, 2003) and testimony (by April 11, 2003).

Board Releases Available via the Internet

Decisions and notices of the Board, including this notice, are available on the Board's Web site at ''*http://www.stb.dot.gov.*''

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Dated: March 26, 2003.

Vernon A. Williams,

Secretary.

[FR Doc. 03–7752 Filed 3–28–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34293]

Metro-North Commuter Railroad Company-Acquisition and Operation Exemption-Line of Norfolk Southern Railway Company and Pennsylvania Lines LLC

Metro-North Commuter Railroad Company (Metro-North),[1] a noncarrier, has filed a notice of exemption under 49 CFR 1150.31 to acquire through a sublease from Norfolk Southern Railway Company (NSR) and operate a rail line owned by Pennsylvania Lines LLC (PRR) and leased and operated by NSR: (1) Between approximately milepost JS–31.3 at Suffern, NY, and approximately milepost JS–76.6 at CP-Howells, NY; and (2) between approximately milepost SR–68.7 (equals JS–76.6) at CP-Howells, NY, and approximately milepost SR–89.9 at Port Jervis, NY.[2] The total distance of the line is approximately 66.5 miles and it traverses Orange and Rockland Counties, NY.[3]

The transaction was scheduled to be consummated on February 28, 2003.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34293, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Kevin M. Sheys, Esq., Kirkpatrick & Lockhart LLP, 1800 Massachusetts Ave., NW., 2nd Floor, Washington, DC 20036–1800.

Board decisions and notices are available on our website at ''*http://www.stb.dot.gov.*''

Decided: March 11, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–7679 Filed 3–28–03; 8:45 am]

BILLING CODE 4915–00–P

[1] Metro-North, a subsidiary of Metropolitan Transportation Authority, provides mass transportation for commuters in the States of New York and Connecticut. It has been providing passenger service over the line since 1983 pursuant to a trackage rights agreement. That agreement will be replaced by a new sublease and operations agreement, pursuant to which Metro-North will continue to conduct passenger operations and NSR will continue to conduct freight operations on the line.

[2] The line is a continuous line of railroad between Suffern and Port Jervis, that is sometimes referred to as the Port Jervis Line.

[3] On March 5, 2003, Metro-North filed a motion to dismiss its notice of exemption in this case to obtain a jurisdictional determination regarding its prospective common carrier status with respect to the line. That motion will be addressed in a subsequent decision.

DEPARTMENT OF THE TREASURY

Office of International Investment; Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Office of International Investment within the Department of the Treasury is soliciting comments concerning the information collection provisions of the Regulations Pertaining to Mergers, Acquisitions and Takeovers by Foreign Persons, 31 CFR 800.402.

DATES: Written comments should be received on or before May 30, 2003 to be assured of consideration.

ADDRESS: Direct all written comments to Gay Sills, Director, Office of International Investment, Department of the Treasury, 1500 Pennsylvania Ave., NW., 4201NY, Washington, DC. 20220 (Tel.: (202) 622–1860).

FOR FURTHER INFORMATION CONTACT: Jack Dempsey, Economist (Tel.: (202) 622–1860), Office of International Investment, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220; Francine McNulty Barber, Senior Counsel, Department of the Treasury, Room 2010, 1500 Pennsylvania Ave., NW., Washington, DC 20220, ((202) 622–1947).

SUPPLEMENTARY INFORMATION:

Title: Regulations Pertaining to Mergers, Acquisitions and Takeovers by Foreign Persons.

OMB Number: 1505–0121.

Abstract: The information request in this proposed collection is contained in section 800.402. The information collected under these regulations is used by the Committee on Foreign Investment in the United States (CFIUS), an inter-agency committee chaired by the Secretary of the Treasury and comprised of the Secretaries of State, Defense, Treasury and Commerce, the Attorney General, the U.S. Trade Representative. the Director of the Office of Management and Budget, the Chairman of the Council of Economic Advisers, and the Assistants to the President for National Security, National Economic Policy, and Science and Technology. The President has delegated to CFIUS the President's authority under section 721 of the Defense Production Act to determine the effects on the national security of acquisitions proposed or pending after the date of enactment (August 23, 1988) by or with foreign persons that could result in foreign control of persons engaged in interstate commerce in the United States.

Current Actions: Extension.

Type of Review: Extension.

Affected Public: Foreign businesses and foreign individuals.

Estimated Number of Responses: 60.

Estimated Time Per Respondent: This varies, depending on individual circumstances, with an average of 60 hours.

Estimated Total Annual Burden Hours: 3600 hours.

Requests for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will be become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including

through use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 24, 2003.

Francine McNulty Barber,

Senior Counsel, Office of the Assistant General Counsel for International Affairs.

[FR Doc. 03–7560 Filed 3–28–03; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Privacy Act of 1974; System of Records

AGENCY: Office of Inspector General, Treasury.

ACTION: Notice of alteration of Privacy Act system of records.

SUMMARY: The Department of the Treasury, Office of Inspector General (OIG), gives notice of a proposed alteration to the system of records entitled ''Investigative Data Management System '' Treasury/DO,'' which is subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a). The system was last published in its entirety in the **Federal Register** on February 19, 2002, at 67 FR 7487.

DATES: Comments must be received no later than April 30, 2003. The proposed routine use will be effective May 12, 2003, unless the Department receives comments that would result in a contrary determination.

ADDRESSES: Comments must be submitted to the Office of Counsel, Office of Inspector General, 740 15th Street, NW., Suite 110, Washington, DC 20220. Comments may be submitted via e-mail to: *DelmarR@oig.treas.gov.* Comments received will be available for inspection at the same address between the hours of 9 a.m. and 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Rich Delmar, Counsel to the Inspector General, (202) 927–0650.

SUPPLEMENTARY INFORMATION: As required by the Inspector General Act of 1978, as amended, 5 U.S.C.A. appendix 3, the OIG conducts investigations of the bureaus and offices of the Department of the Treasury, with the exception of the Internal Revenue Service. The investigative case files and data produced by this work are organized to be retrievable by names of subjects, complainants, victims, and witnesses.

The Homeland Security Act of 2002, Public Law 107–296 has caused certain bureaus of the Department of the Treasury to be transferred to other departments: the Bureau of Alcohol, Tobacco and Firearms to the Department of Justice, and the Secret Service, Customs Service, and Federal Law Enforcement Training Center to the Department of Homeland Security. The responsibilities of the OIG to conduct investigations regarding these bureaus are being similarly transferred to the OIGs of the Department of Justice (DOJ) and Department of Homeland Security (DHS). To enable these OIGs to carry out their investigative responsibilities, access to Treasury OIG investigative records regarding events and personnel of the transferred bureaus is necessary. New routine use (8) will accomplish this by allowing the OIGs of the DOJ and DHS to access Treasury OIG investigative reports and case files containing information related to the bureaus for which they have acquired responsibility.

Section 812 of the Homeland Security Act of 2002, Public Law 107–296, creates a new section 6(e) of the Inspector General Act of 1978, as amended, 5 U.S.C.A. appendix 3, by which OIGs are granted law enforcement authority as determined by the Attorney General. The statute requires that OIGs obtain peer reviews conducted by other OIGs to advise the Department of Justice and the President's Council on Integrity and Efficiency (PCIE) how this authority is used. New routine use (9) will allow other OIGs, the PCIE, and the Department of Justice, with respect to their involvement in conducting peer reviews of the Treasury OIG, access to the IDMS in connection with their evaluation of how Treasury OIG uses its law enforcement authority.

These two new routine uses are consistent with the purpose for which information is collected by this system, to detect and prevent fraud, waste, and abuse in the programs and operations of the bureaus and offices of the Department.

For the reasons set forth in the preamble, OIG proposes to alter system of records Treasury/DO.190—Investigative Data Management System, as follows:

Treasury/DO.190

SYSTEM NAME:

Investigative Data Management System—Treasury/DO.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

Description of change: The period ''.'' at the end of routine use (7) is replaced with a semicolon '';'', and the following routine uses are added at the end thereof:

''(8) Provide information to the Office of Inspector General of the Department of Justice with respect to investigations involving the Bureau of Alcohol, Tobacco and Firearms; and to the Office of Inspector General of the Department of Homeland Security with respect to investigations involving the Secret Service, Customs Service, and Federal Law Enforcement Training Center, for such OIGs' use in carrying out their obligations under the Inspector General Act of 1978, as amended, 5 U.S.C.A. Appendix 3 and other applicable laws; and

(9) Provide information to other OIGs, the President's Council on Integrity and Efficiency, and the Department of Justice, in connection with their review of Treasury OIG's exercise of statutory law enforcement authority, pursuant to section 6(e) of the Inspector General Act of 1978, as amended, 5 U.S.C.A. Appendix 3.''

* * * * *

Dated: March 17, 2003.

W. Earl Wright, Jr.,

Chief Management and Administrative Programs Officer.

[FR Doc. 03–7561 Filed 3–28–03; 8:45 am]

BILLING CODE 4810–27–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel (TAP) Multilingual Initiative Issue (MLI) Committee Will Be Conducted

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel (TAP) Multilingual Initiative Issue (MLI) Committee will be conducted.

DATES: The meeting (s) will be held Friday, April 25, 2003, & Saturday, April 26, 2003.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Multilingual Initiative Issue Committee will be held Friday,

April 25, 2003, from 8:30 a.m. to noon e.s.t., and from 1 p.m. to 4 p.m. e.s.t., and Saturday, April 26, 2003, from 8:30 a.m. to noon e.s.t. at the Hotel Inter-Continental Miami, 100 Chopin Plaza, Miami, Florida 33131. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service. You may submit written comments to the panel by faxing to (954) 423–7975 or by mail to Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Public comments will also be welcome during the meeting. Individual comments will be limited to 5 minutes. Due to limited space, notification of intent to participate in the meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: March 20, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–7683 Filed 3–28–03; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 68, No. 61

Monday, March 31, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 70, 75, and 90

RIN 1219–AB14

Verification of Underground Coal Mine Operators' Dust Control Plans and Compliance Sampling for Respirable Dust

Correction

In proposed rule document 03–3941 beginning on page 10784 in the issue of Thursday, March 6, 2003, make the following corrections:

1. On page 10794, in the first column, in the second paragraph, in the ninth line, ''[(10.0%+7.2%+16.1%)3=11.1%]'', should read ''[(10.0%+7.2%+16.1%)÷3=11.1%]''.

2. On page 10795, the table heading should have appeared as follows: ''Table III–1. For Two Scenarios, Using Alternate Methods, Percent of Quartz in Respirable Dust''.

3. On page 10803, in the third column, the fourth line from the bottom, ''(2.6mg/m^{3}4)'', should read ''(2.6 mg/m^3÷4)''.

4. On page 10816, in the second column, in footnote number nine, in the last line, ''P(X>) 10'', should read ''P(X>10)''.

5. On page 10839, in the first column, the heading ''3. Biological Respirable Coal Mine Dust'', should read ''3. Biological Action: Respirable Coal Mine Dust''.

6. On page 10842, in the table, in the first column, under ''Studies'', in the first line, ''Hansen, *et al.*,'', should read ''Hansen, *et al.*, 1999''.

7. On page 10849, in the second column, in the 20th line, ''(MSHA, datafile: RBDA2001.ZIP)'', should read ''(MSHA, datafile: RB–DA2001.ZIP)''.

8. On page 10853, in the first column, the first equation within the footnotes is corrected to read as follows:

$$\lambda' = P_{y'} - P_{x'}$$

9. On page 10857, Table IX–2–2 is corrected to read as set forth below

TABLE IX–2–2.—ESTIMATED NUMBER OF AFFECTED MECHANIZED MINING UNITS [a] (MMUS) AND AFFECTED UNDERGROUND COAL MINERS, BY PRODUCTION SHIFTS AND MINE SIZE

Number of production shifts	Mine size by number of employees									Totals			
	Less than 20 employees			20 to 500 employees			Greater than 500 employees			MMUs n=	DOs [b] n=	NDOs [c] n=	Total affected miners on MMUs
	NMUs n=	DOS [b] n=	NDOs [c] n=	MMUs n=	DOs [b] n=	NDOs [c] n=	MMUs n=	DOs [b] n=	NDOs [c] n=				
One	98	98	588	24	24	144	0	0	0	122	122	732	854
Two	16	32	192	264	528	3,168	0	0	0	280	560	3,360	3,920
Three	0	0	0	55	165	990	18	54	324	73	219	1,314	1,533
Totals ..	114	130	780	343	717	4,302	18	54	324	475	901	5,406	6,307

[a] Affected MMUs in production are estimated by applying the observed percentage of MMUs' production shifts by mine size (as of July 10, 2002) to the snapshot of active MMUs as of May 14, 2002, by mine size, and multiplied by 0.570 (since fifty-seven percent of MMUs have a pattern of recurrent overexposures) (MSHA Table, July 10, 2002; MSHA Table, May 14, 2002).

Where:

[b] DO = Designated Occupational Miners = (MMUs * 1 * production shifts).

[c] NDO = Non-designated Occupational Miners = (MMUs * 6 * production shifts).

10. On page 10860, in the first table, in the eighth column, under ''Prevented cases, n='', in the second line, ''3.18'', should read ''3.8''.

[FR Doc. C3–3941 Filed 3–28–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
March 31, 2003

Part II

Department of Labor

Wage and Hour Division

29 CFR Part 541

Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees; Proposed Rule

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 541

RIN 1215–AA14

Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Proposed rule and request for comments.

SUMMARY: The Department of Labor proposes to update and revise the regulations issued under the Fair Labor Standards Act (FLSA) implementing the exemption from minimum wage and overtime pay for executive, administrative, professional, outside sales and computer employees. These exemptions are often referred to as the FLSA's ''white collar'' exemptions. To be considered exempt, employees must meet certain minimum tests related to their primary job duties and be paid on a salary basis at not less than specified minimum amounts. The basic ''duties'' tests were originally established in 1938 and revised in 1940. The duties tests were last modified in 1949 and have remained essentially unchanged since that time. The ''salary basis'' test has remained essentially unchanged since 1954. The salary levels required for exemption were last updated in 1975, and the amounts adopted at that time were intended as an interim adjustment. Suggested changes to the part 541 regulations have been the subject of public commentary for years, including a review of the regulations by the U.S. General Accounting Office (GAO) in 1999. GAO recommended that the Secretary of Labor comprehensively review and make necessary changes to the part 541 regulations to better meet the needs of both employers and employees in the modern work place, and to anticipate future work place trends. During 2002, the Department of Labor convened a series of stakeholder meetings, and heard suggestions for changes from over 40 interest groups representing employees and employers. The Department of Labor has carefully examined issues of concern raised by various interested parties in developing this proposed rule. The Department now invites public comment on all aspects of the proposed rule.

DATES: Submit written comments on or before June 30, 2003.

ADDRESSES: Address written comments to Tammy D. McCutchen, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210. Commenters who would like to be notified that their comments were received should include with their comments a self-addressed, stamped postcard or submit them certified mail, return receipt requested. As a convenience, comments of 20 pages or less may be submitted by facsimile (''FAX'') machine to (202) 693–1432, which is not a toll-free number, or by e-mail to: *whd-reg@fenix2.dol-esa.gov.* Because we continue to experience delays in receiving mail in our area, commenters are encouraged to submit any comments by mail early, or to transmit them electronically by FAX or e-mail.

FOR FURTHER INFORMATION CONTACT: Richard M. Brennan, Deputy Director, Office of Enforcement Policy, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3506, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 693–0745 (this is not a toll-free number). Copies of this proposed rule may be obtained in alternative formats (Large Print, Braille, Audio Tape or Disc), upon request, by calling (202) 693–0023 (not a toll-free number). TTY/TDD callers may dial toll-free 1–877–889–5627 to obtain information or request materials in alternative formats.

Questions of interpretation and/or enforcement of regulations issued by this agency or referenced in this notice may be directed to the nearest Wage and Hour Division District Office. Locate the nearest office by calling our toll-free help line at 1–866–4USWAGE (1–866–487–9243) between 8 a.m. and 5 p.m. in your local time zone, or log onto the Wage and Hour Division's Web site for a nationwide listing of Wage and Hour District and Area Offices at: *http://www.dol.gov/esa/contacts/whd/america2.htm.*

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This proposed rule contains no new information collection requirements subject to review and approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). The information collection requirements for employers who claim exemption under 29 CFR part 541 are contained in the general FLSA recordkeeping requirements codified at 29 CFR part 516, which were approved by the Office of Management and Budget under OMB Control number 1215–0017. *See* 29 CFR 516.0 and 516.3.

II. Background

The FLSA generally requires covered employers to pay their employees at least the federal minimum wage (which is currently $5.15 an hour), and overtime premium pay of time-and-one-half the regular rate of pay for all hours worked over 40 in a work week. However, the FLSA includes a number of exemptions from the minimum wage and overtime requirements. Section 13(a)(1) of the FLSA, codified at 29 U.S.C. 213(a)(1), exempts from both minimum wage and overtime pay ''any employee employed in a bona fide executive, administrative, or professional capacity * * * or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of the Administrative Procedure Act * * *.)''

The FLSA does not define the terms ''executive,'' ''administrative,'' ''professional,'' or ''outside salesman.'' However, pursuant to Congress' grant of rulemaking authority, implementing regulations have been issued, at 29 CFR part 541, defining the scope of the section 13(a)(1) exemptions. Because the FLSA delegates to the Secretary of Labor the power to define and delimit the specific terms of the exemptions through notice-and-comment rulemaking, the regulations so issued have the binding effect of law.[1]

These exemptions have engendered considerable confusion over the years regarding who is, and who is not, exempt. The implementing regulations generally require each of three tests to be met for the exemption to apply: (1) The employee must be paid a predetermined and fixed salary, not an hourly wage that is subject to reductions because of variations in the quality or quantity of work performed (the ''salary basis test''); (2) the amount of salary paid must meet minimum specified amounts (the ''salary level test''); and (3) the employee's job duties must primarily involve managerial, administrative or professional skills as defined by the regulations (the ''duties tests'').

Legislative History

Section 13(a)(1) was included in the original FLSA of 1938, and was based on provisions contained in the earlier

[1] *See Batterton* v. *Francis,* 432 U.S. 416, 425 n. 9 (1977).

National Industrial Recovery Act and state law precedents. Specific references in the legislative history to the employee exemptions contained in section 13(a)(1) are scant. However, the exemptions were premised on the belief that the workers exempted typically earned salaries well above the minimum wage, and they were presumed to enjoy other compensatory privileges such as above average fringe benefits, greater job security and better opportunities for advancement, setting them apart from the nonexempt workers entitled to overtime pay.[2] Further, the type of work they performed was difficult to standardize to any time frame and could not be easily spread to other workers after 40 hours in a week, making enforcement of the overtime provisions difficult and generally precluding the potential job expansion intended by the FLSA's time-and-a-half overtime premium.[3]

Initially, persons employed in a ''local retailing capacity'' were also exempt, but Congress eliminated that language from the section 13(a)(1) exemptions in 1961 when the FLSA was expanded to cover retail and service enterprises.[4] Teachers and academic administrative personnel were added to the exemption when elementary and secondary schools were made subject to the FLSA in 1966. The Education Amendments of 1972 made the Equal Pay provisions, section 6(d) of the FLSA, expressly applicable to employees who were otherwise exempt from the FLSA under section 13(a)(1). A 1990 enactment expanded the exemption to include computer systems analysts, computer programmers, software engineers, and similarly skilled professional workers, including those paid on an hourly basis if paid at least 6½ times the minimum wage.[5] The compensation test for computer-related occupations was subsequently capped at $27.63 an hour (6½ times the former $4.25 minimum wage) when Congress increased the minimum wage to its current $5.15 rate and enacted the new section 13(a)(17) exemption for such computer employees as part of the 1996 FLSA Amendments.[6]

Regulatory History

The FLSA became law on June 25, 1938, and the first version of part 541 was issued later that year in October (3 FR 2518; Oct. 20, 1938). In 1940, after receiving many comments on the original regulations, the Wage and Hour Division convened a series of public hearings for interested parties to express views on the regulations and to propose amendments. Revised regulations were issued in October 1940 (5 FR 4077; Oct. 15, 1940).[7] Further hearings were initiated in 1947, leading to revised regulations that were issued in December 1949 (14 FR 7705; Dec. 24, 1949).[8] An explanatory bulletin interpreting some of the terms used in the regulations was published as subpart B of part 541 on December 28, 1949 (14 FR 7730), and became effective on January 25, 1950. On March 9, 1954, the Department issued proposed revisions to the regulatory interpretations of ''salary basis'' (19 FR 1321), followed by a final rule issued on July 17, 1954 (19 FR 4405). The regulations were revised in 1958 to adjust the salary levels (23 FR 8962; Nov. 18, 1958).[9] Further changes were made to accommodate statutory amendments to the FLSA and/or to increase the salary levels in 1961, 1963, 1967, 1970, 1973, and 1975.[10] The existing salary rates were last revised on an interim basis in 1975 (*see* 40 FR 7092; Feb. 19, 1975). Revisions to increase the salary rates in January 1981 (issued at the end of the Carter Administration) were stayed indefinitely by the incoming Reagan Administration (46 FR 11972; Feb. 12, 1981). Based on petitions from industry groups to address other parts of the rules, and developing case law, the Department began a more comprehensive review leading to a 1985 Advance Notice of Proposed Rulemaking (ANPRM) that reopened the public comment period and broadened the review to all aspects of the regulations (50 FR 47696; Nov. 11, 1985).

The Department revised these regulations in the early 1990s to address two specific issues. A 1990 law (Pub. L. 101–583; Nov. 15, 1990) required regulations to be issued permitting computer systems analysts, computer programmers, software engineers, and other similarly-skilled workers in the computer field to be exempt, including those paid on an hourly basis if the hourly rate exceeded 6½ times the applicable minimum wage. (57 FR 46744; Oct. 9, 1992). Also, in 1992, the Department issued a final rule to modify the exemption's requirement for payment on a ''salary basis'' as applied in the public sector for otherwise exempt employees paid according to pay and leave systems based on principles of public accountability. Under 29 CFR 541.5d (57 FR 37677; Aug. 19, 1992), an otherwise exempt public sector employee does not lose exempt status under a regulated public sector pay and leave system that requires partial-day (or hourly) deductions from pay for employee absences not covered by accrued leave, or for budget-driven furloughs.

Overview of Existing Requirements

The implementing regulations in part 541 contain specific criteria that define each category of exemption provided by section 13(a)(1). The applicability of any particular exemption is not presumed under the FLSA, but must be affirmatively established. Job titles, nomenclature, or job descriptions do not determine the exemptions, nor does paying a ''salary'' rather than an hourly rate. Rather, whether an exemption applies depends on the specific duties and responsibilities of each employee's job, how much salary the employee is paid, and whether the salary is guaranteed without regard to the quality or quantity of work performed, as defined by the regulations.

The duties tests differ for each category of exemption. Two different salary (or fee) levels exist for each of the exemptions for executive, administrative, and professional employees. The salary requirements do not apply to certain licensed or certified doctors, lawyers and teachers, or to outside sales employees. Employees paid below the applicable lower salary rate are not exempt regardless of their duties. Those paid above the higher (or

[2] Report of the Minimum Wage Study Commission, Volume IV, pp. 236 and 240 (June 1981).

[3] *Id.*

[4] Public Law 87–30, 75 Stat. 65 (May 5, 1961). Although Congress eliminated the separate, broad exemption for retail employees in 1961, such employees could still qualify as exempt executive, administrative or professional employees if they met the requirements for these exemptions, and Congress relaxed the duties tests solely to make it easier for such firms to meet the exemption requirements.

[5] Public Law 101–583, 104 Stat. 2871 (Nov. 15, 1990).

[6] 29 U.S.C. 213(a)(17), as added by the 1996 FLSA Amendments (sec. 2105(a), Public Law 104–188, 110 Stat. 1755 (Aug. 20, 1996)).

[7] *See,* ''Executive, Administrative, Professional * * * Outside Salesman'' Redefined, Wage and Hour Division, U.S. Department of Labor, Report and Recommendations of the Presiding Officer (Harold Stein) at Hearings Preliminary to Redefinition (Oct. 10, 1940) (''Stein Report'').

[8] *See,* Report and Recommendations on Proposed Revisions of Regulations, part 541, by Harry Weiss, Presiding Officer, Wage and Hour and Public Contracts Divisions, U.S. Department of Labor (June 30, 1949) (''Weiss Report'').

[9] *See,* Report and Recommendations on Proposed Revisions of Regulations, part 541, under the Fair Labor Standards Act, by Harry S. Kantor, Presiding Officer, Wage and Hour and Public Contracts Divisions, U.S. Department of Labor (March 3, 1958) (''Kantor Report'').

[10] *See,* 26 FR 8635 (Sept. 15, 1961); 28 FR 9505 (Aug. 30, 1963); 32 FR 7823 (May 30, 1967); 35 FR 883 (Jan. 22, 1970); 38 FR 11390 (May 7, 1973); and 40 FR 7091 (Feb. 15, 1975).

''upset'') salary rate are exempt if they meet a ''short'' duties test. Those paid between the higher and lower salary rates must meet a more detailed ''long'' duties test.

The salary tests were originally designed to operate as a ready guide to assist employers in deciding which employees were more likely to meet the duties tests in the exemptions. In fact, the salary levels specified in the regulations were once viewed as the best indicator of exempt status. As last revised effective April 1, 1975, the salary required for executive and administrative employees under the current ''long'' test is $155 per week; professional employees are exempt at $170 per week. The short test salary level (requiring fewer duties to be satisfied) for all three exemptions is $250 per week. Because these salary levels have not been raised in 28 years, virtually all employees are tested for exemption today under the ''short'' duties tests. Moreover, while the existing salary tests ($155, $170, and $250 per week) still reflect the interim 1975 rates, a full-time minimum wage worker today earns $206 per week for a 40-hour work week. Consequently, the existing salary tests no longer provide employees or employers any help in distinguishing between bona fide executive, administrative, and professional employees and those who should not be considered for exemption. Moreover, the outdated salary tests and complex duties tests in the current regulation cause employees to be erroneously misclassified as exempt and thus not paid properly.

Under the currently applicable ''short'' test exemption requirements, an exempt ''executive'' employee must be paid at least $250 per week on a salary basis, have a primary duty to manage the enterprise or a customarily recognized department or subdivision thereof, and regularly direct the work of two or more other employees. An exempt ''administrative'' employee must be paid at least $250 per week on a salary or fee basis, have a primary duty of office or non-manual work directly related to management policies or general business operations of the employer or the employer's customers (or similar functions in the administration of a school system or educational institution in work directly related to academic instruction), and perform work requiring the exercise of discretion and independent judgment. An exempt ''professional'' employee must be paid at least $250 per week on a salary or fee basis; have a primary duty of (1) work requiring knowledge of an advanced type in a field of science or learning customarily acquired by prolonged, specialized, intellectual instruction and study, or (2) work that is original and creative in a recognized field of artistic endeavor, or (3) teaching in a school system or educational institution, or (4) work as a computer systems analyst, computer programmer, software engineer, or other similarly-skilled worker in the computer software field; and perform work requiring the consistent exercise of discretion and judgment, or work requiring invention, imagination, or talent in a recognized field of artistic endeavor. Under the professional exemption, the salary or fee requirement does not apply to certain licensed or certified doctors, lawyers and teachers; or to certain computer-related occupations if paid on an hourly basis at $27.63 or more per hour. An ''outside sales'' employee who is customarily and regularly engaged away from the employer's places of business making sales or obtaining orders or contracts for services or use of facilities, and who does not exceed a twenty percent tolerance per work week performing duties unrelated to his or her own outside sales or solicitations, is exempt. There are no salary or fee requirements for outside sales employees.

Employees meeting the foregoing requirements are excluded from the Act's minimum wage and overtime protections. Thus, they may work any number of hours in the work week and are not subject to the Federal law's overtime pay requirements. Some state laws have stricter exemption standards than those just described. The FLSA does not preempt any such stricter State standards. If a State or local law establishes a higher standard than the provisions of the FLSA, the higher standard applies. *See* section 18 of the FLSA, 29 U.S.C. 218.

The executive and administrative exemptions apply generally to certain management and staff-level positions within an employer's organization. For example, department heads with management as their primary duty, who regularly supervise two or more full time employees in their department, may qualify as executives if they are paid a predetermined salary of $250 or more per week. An administrative employee must primarily perform office or nonmanual work of substantial importance to the management of the business, but is not required to supervise other employees. Persons with functional (rather than departmental) management authority, or who perform ''staff'' rather than production or sales work, may qualify as administrative employees if their duties include ''discretion and independent judgment'' or decision-making responsibilities on important matters in managing the employer's general business operations (*e.g.,* if they primarily determine or affect management policies in a particular area, such as credit, personnel, or labor relations). Executive assistants delegated decision-making authority to carry out parts of an exempt executive or administrative employee's management responsibilities may also qualify as exempt administrative employees.

The professional exemption (aside from the artistic, teaching, and computer-related categories) applies to the recognized professions requiring advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study (*i.e.,* the ''learned'' professions, such as doctor, lawyer, architect, engineer, etc.), and is typically characterized by possession of the appropriate academic degree for the particular profession. Outside sales employees must regularly work away from their employer's place of business making sales or obtaining orders or contracts; they may not exceed a 20 percent tolerance for performing duties unrelated to their own outside sales work. ''Inside sales'' employees are not included within the scope of the exemption for ''outside sales'' employees.

Under the regulatory ''salary basis'' test codified at 29 CFR 541.118, partial-day deductions from pay based on the number of hours worked (''pay-docking'') are generally not allowed in the private sector (unless made in the first or last weeks of employment or due to unpaid leave taken pursuant to the Family and Medical Leave Act, 29 U.S.C. 2601 *et seq.*). Disciplinary deductions from pay also violate the ''salary basis'' test (except for safety rules of major significance, such as no-smoking rules in oil refineries and coal mines). These concepts clarify the intended meaning of the requirements for payment of a guaranteed salary—*i.e.,* the predetermined salary amount may not be reduced because of variations in either the quality or quantity of the work performed by the employee. Pay practices not meeting the guaranteed ''salary basis'' requirements cause the exemption to be declared inapplicable, in some cases for entire classes of employees.[11]

[11] As noted, a special rule applies to employees of public agencies paid according to regulated pay and leave systems that require deductions for partial-day absences not covered by accrued leave,

Public Commentary and the GAO Report

Suggested changes to the part 541 regulations have been the subject of extensive public commentary for years, including a report issued by the General Accounting Office (GAO) in September 1999.[12] In this report, GAO chronicled the background and history of the exemptions, estimated the number of workers who might be included within the scope of the exemptions, identified the major concerns of employers and employees regarding the exemptions, and suggested possible solutions to the issues of concern raised by the affected interests. In general, the employers contacted by GAO were concerned that the regulatory tests are too complicated, confusing, and outdated for the modern work place, and create potential liability for violations when errors in classification occur.[13]

Employers were particularly concerned about potential liability for violations of the complex ''salary basis'' test and the exacting requirements of the so-called ''no-docking'' rule, which has been the focus of lawsuits against employers in recent years brought collectively by groups of highly paid managerial and professional employees. This test in effect limits employers' ability to ''dock'' exempt employees'' pay for partial-day personal absences and disciplinary violations, which limits employers' ability to hold exempt employees accountable for their time and actions. In addition, employers believed that limiting the administrative and professional exemptions to ''nonproduction'' employees did not account for the effects of modern technology on employment today. They also noted the traditional limits of the exemptions have blurred in the modern work place, citing highly skilled and highly paid technical workers without college degrees who do not qualify as exempt professionals but who perform essentially the same job as exempt engineers who have the required academic degrees. Manufacturing employers pointed to new technology used in factories, which requires advanced technical skills but far less traditional ''manual'' labor. They also told GAO that, while these workers may have to follow precise written guidelines to perform their work, prescribed procedures were important to modern quality control. Employers also believed adherence to precise written guidelines—one major distinction between exempt and nonexempt workers under the existing regulations—is necessary in a modern, efficient work place. Employers also complained that the discretion and independent judgment requirements for administrative and professional employees are confusing and applied inconsistently by Wage and Hour Division investigators in classifying similarly-situated employees, and are particularly difficult to apply. Thus, employers were unsure how to classify administrative personnel. GAO's discussions with employers and Wage and Hour Division investigators, and its review of compliance cases, confirmed that this part of the duties test involved particularly difficult and subjective determinations, for both the employers and the investigators, and that it was a source of contention in Department audits.

Employee representatives contacted by GAO, in contrast, were most concerned that the use of the exemptions be limited to preserve existing overtime work hour limits and the 40-hour standard work week for as many employees as possible. They believed the tests have become weakened as applied today by judicial rulings and do not adequately restrict employers' use of the exemptions. When combined with the low salary test levels, the employee representatives felt that few protections remain, particularly for low-income supervisory employees. They believed that inflation has severely eroded the salary-level limitations originally envisioned by the regulations. Because of inflation, according to the employee representatives, the current salary test levels are now near the minimum wage level, rendering application of the regulations to the current work force virtually meaningless.

GAO's report noted that the conflicting interests affected by these rules have made consensus difficult and that, since the FLSA was enacted, the interests of employers to expand the white collar exemptions have competed with those of employees to limit use of the exemptions. To resolve the issues presented, GAO suggested that employers' desires for clear and unambiguous regulatory standards must be balanced with employees' desires for fair and equitable treatment in the work place. The GAO recommended that the Secretary of Labor comprehensively review the regulations and restructure the exemptions to better accommodate today's workplace and to anticipate future work place trends.

The House Subcommittee on Workforce Protections of the Committee on Education and the Workforce held a hearing in May 2000 to receive testimony from GAO and other interested parties on GAO's September 1999 report. Testimony provided by the GAO, representatives of business and labor organizations, and the Department of Labor confirmed GAO's assessment of the issues and the difficulty in moving forward with constructive changes due to the differing views of the many affected and interested parties, and the potential impact of possible changes. Representatives of worker interests opposed making changes that would remove overtime protections for workers now covered, while business interests and employer groups advocated modernizing the regulations to exempt more classifications of workers from overtime pay.

III. Summary of Current Regulatory Proposal

Structure and Organization

Part 541 presently contains two subparts. Subpart A provides the regulatory tests that define each category of the exemption (executive, administrative, professional, and outside sales). Subpart B provides interpretations of the terms used in the exemptions. Subpart B was first issued as an explanatory bulletin effective in January 1950 to provide guidance to the public on how the Wage and Hour Division interpreted and applied the exemption criteria when enforcing the FLSA. The Department proposes to eliminate the current distinction between the ''regulations'' in subpart A and the ''interpretations'' in subpart B. This will consolidate and streamline the regulatory text, reduce redundancies, and make the regulations more understandable and easier to decipher when applying them to particular factual situations, providing much-requested simplification. In addition, eliminating the distinction between the subpart A ''regulations'' and the subpart B ''interpretations'' will eliminate confusion regarding the appropriate level of deference to be given to the provisions in each subpart.

The proposed rule reorganizes the subparts according to each category of exemption, and consolidates common elements (such as a new subpart containing common definitions), in order to eliminate unnecessary duplication and repetition of regulatory

and for budget-driven furloughs (*see* 29 CFR 541.5d).

[12] Fair Labor Standards Act: White Collar Exemptions in the Modern Work Place (GAO/HEHS–99–164, September 30, 1999).

[13] Under the FLSA, employees may sue their employer (individually or collectively) for up to two, or in some cases three, years of back wages, plus an equal amount in liquidated damages and attorney fees and court costs, for violations of the FLSA's minimum wage and overtime requirements.

text. Thus, after several introductory provisions in subpart A, the proposed new subpart B would pertain to the executive exemption; subpart C would pertain to the administrative exemption; subpart D would pertain to the professional exemption; subpart E would contain provisions regarding computer employees; and subpart F would contain provisions regarding outside sales employees. The proposed subpart G would include provisions regarding salary requirements applicable to most of the exemptions, including salary levels and the salary basis test. Subpart G would also include a section on highly compensated employees. Proposed subpart H would contain definitions and other miscellaneous provisions applicable to all or several of the exemptions. Finally, numerous editorial changes are proposed throughout the rule to streamline and improve its clarity, delete outdated references and illustrations, and remove gender-specific references.

Current section 541.6, entitled ''Petition for amendment of regulations,'' has been deleted in this proposed rule. The substance of that section, originally adopted in 1938 and providing for interested persons to petition the Administrator for desired changes in these regulations, has been superseded and supplanted by enactment of the Administrative Procedure Act, 5 U.S.C. 553(e).

Finally, the proposed rule deletes a number of discussions regarding application of the exemption to specific occupations. These discussions appeared to be outdated, relating to occupations and duties which may not exist in the 21st century economy. However, because most stakeholders find such examples useful in applying the regulations to specific occupations, we invite comments on specific occupations and duties which should be discussed in the regulations. In particular, we invite comments on occupations the exempt status of which has been the subject of confusion and litigation including but not limited to pilots, athletic trainers, funeral directors, insurance salespersons, loan officers, stock brokers, hotel sales and catering managers, and dietary managers in retirement homes. The Department anticipates that the final rule will include additional provisions on the application of the exemptions to such borderline occupations, but requires more information about the particular job duties and responsibilities generally found in such occupations. We invite comments on which occupations should be included in the final rule and whether such occupations should be treated as exempt or nonexempt, including detailed information about job duties in such occupations.

Subpart A, General Regulations, §§ 541.000—.002

The current regulations have several general, introductory provisions scattered in various locations. The proposed regulations would gather these provisions together into proposed subpart A. Thus, the proposed section 541.000 combines an introductory statement currently located at section 541.99 and information currently located at section 541.5b regarding the application of the equal pay provisions in section 6(d) of the FLSA to employees exempt from the minimum wage and overtime provisions of the FLSA under section 13(a)(1). Proposed section 541.000 also contains new language to reflect legislative changes to the FLSA regarding computer employees and information regarding the new organizational structure of the proposed regulations. Proposed section 541.001 relocates definitions of ''Act'' and ''Administrator'' from their current location in section 541.0. Finally, proposed section 541.002 contains a general statement that job titles alone are insufficient to establish the exempt status of an employee. This fundamental concept, equally applicable to all the exemption categories, currently appears in section 541.201(b) regarding administrative employees.

Subpart B, Executive Employees, §§ 541.100—.107

To qualify as an exempt executive under the current regulations, an employee must be compensated on a salary basis at a rate of not less than $155 per week and meet the ''long'' duties test, or at a rate of not less than $250 per week and meet an abbreviated ''short'' duties test. The long test requires that an exempt executive employee: Have a primary duty of managing the enterprise (or a recognized department or subdivision thereof); customarily and regularly direct the work of two or more other employees; have authority to hire or fire other employees or have particular weight given to suggestions and recommendations as to hiring, firing, advancement, promotion or other change of status; customarily and regularly exercise discretionary powers; and devote no more than 20 percent (or as much as 40 percent in retail or service establishments) of hours worked per week to activities that are not directly and closely related to performing exempt managerial work. The percentage restrictions on performing nonexempt work in the long test do not apply to an employee who is in sole charge of an independent or physically separate branch establishment, or to an owner of at least a 20 percent interest in the enterprise in which the employee is employed. The executive short duties test requires that the employee have a primary duty of managing the enterprise (or a recognized department or subdivision thereof) and customarily and regularly direct the work of two or more other employees.

The proposed regulations would streamline the current regulations by eliminating the separate long and short tests, and substituting a single standard duties test in proposed § 541.100. The proposed standard duties test would provide that an exempt executive employee must: (1) Have a primary duty of managing the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof; (2) customarily and regularly direct the work of two or more other employees; and (3) have the authority to hire or fire other employees or have particular weight given to suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees. This standard test, consisting of the current short test requirements plus a third objective requirement taken from the long test, represents a middle ground between the current long and short tests.

This streamlining and simplification of the current executive exemption regulations will eliminate the long test subsections regarding the percentage restrictions on nonexempt work and the discretionary powers requirement. We propose to eliminate these subsections for several reasons. Because of its outdated salary level, the long test has, as a practical matter, not been operative for many years. Reintroducing its requirements now would add new complexity and burdens to the exemption tests. The tests are complex and require time-testing managers for the duties they perform, hour-by-hour in a typical work week. Employers are not generally required to maintain any records of daily or weekly hours worked by exempt employees (*see* 29 CFR 516.3), let alone perform a moment-by-moment examination of an employee's specific duties performed or discretionary powers exercised. Yet reactivating the long test's limitations on nonexempt work could impose such significant new monitoring requirements (and, indirectly, new recordkeeping burdens) for employers to analyze the substance of each particular

employee's daily and weekly tasks in order to be confident of any claimed exemption. Further, historically, deciding which specific activities were not inherently an ''essential part of and necessarily incident to'' the exempt work proved to be a subjective and difficult standard to apply for employers, employees, as well as Wage and Hour Division investigators. The discretionary powers test has similarly proved to be a subjective and difficult standard to apply. Moreover, making such finite determinations would be made even more difficult in the aftermath of the decisions in *Donovan* v. *Burger King, Corp.*, 675 F.2d 516 (2nd Cir. 1982), *Donovan* v. *Burger King Corp.*, 672 F.2d 221 (1st Cir. 1982), and similar judicial rulings which hold that an exempt employee's managerial duties can be carried out at the same time the employee performs nonexempt manual tasks. Accordingly, given these developments in judicial construction of the law, the Department is of the view that the discretionary powers provision and the percentage limitations on particular duties formerly applied under the now dormant long test are not useful criteria that should be reintroduced for defining the executive exemption in today's work place.

The proposed regulations at § 541.101 would recognize as an exempt executive any employee who owns at least a 20 percent equity interest in the enterprise in which the employee is employed. Section 541.102 of the proposed regulations would continue the principle that an employee in ''sole charge'' of an independent establishment or a physically separated branch establishment may qualify as an exempt executive. ''Sole charge'' of an establishment is defined to include the senior employee with authority to make decisions regarding day-to-day operations and to direct the work of other employees. These provisions appear in the current regulations as exceptions to the percentage restrictions on non-exempt work under the former long test, in recognition of the due weight to be given the freedom from direct supervision and the high degree of executive responsibility enjoyed by the top person in charge of a separate business location, as well as the special status of a partial equity owner of an enterprise. The Department believes that these continue to be valid concepts for special status as executives under the proposed restructured regulations as well. The Department seeks comments on whether the salary level and/or salary basis requirements should be eliminated as unnecessary for sole charge executives and business owners. We have proposed to eliminate those requirements only for the 20 percent owner, based upon our belief that such an individual likely will share in the profits of the enterprise and that this is an adequate substitute indicator of exempt status.

The proposed regulations also would reorganize, simplify, streamline and update the regulations in other ways. The proposed regulations utilize objective, plain language in an attempt to make the regulations understandable to employees and employee representatives, small business owners and human resource professionals. We also propose to eliminate outdated and uninformative examples and to update definitions of key terms and phrases. The proposed regulations would move a number of sections pertaining to salary issues (current §§ 541.117, 541.118) to a new subpart G (discussed below), where all such provisions will be consolidated. Other sections relevant to several or all of the exemption categories (such as the definition of primary duty and a section regarding application of the exemptions to trainees) would move to a proposed new subpart H (Definitions and Miscellaneous Provisions) to eliminate unnecessary repetition. The following sections of the current regulations have been edited and moved to proposed new subpart H:

Current Section . . . Moved to . . .	Proposed section
541.101 General	541.702
541.103 Primary duty	541.700
541.108 Work directly and closely related	541.703
541.109 Emergencies	541.705
541.110 Occasional tasks	541.706
541.111 Nonexempt work generally	541.702
541.116 Trainees	541.704

Section 541.102 of the current regulations, entitled ''Management,'' has been modified and moved to proposed section 541.103.

Section 541.115 of the current regulations, entitled ''Working foremen,'' has been moved to proposed § 541.106 and renamed, ''Working supervisors,'' although no substantive changes are intended. A new provision on supervisors in retail establishments has been added as proposed § 541.107. Both 541.106 and 541.107 address the difficult issue of classifying employees who have both exempt supervisory duties and non-exempt duties, and the Department invites comments on whether these sections have appropriately distinguished exempt and non-exempt employees. Section 541.106 provides, as in the current regulation, that an employee with a primary duty of ordinary production work is not exempt even if the employee also has some supervisory responsibilities. This situation often occurs in a factory setting where a collective bargaining unit employee who works on a production line also has some responsibility to direct the work of other bargaining unit employees. Another example is a police officer who directs the work of other police officers on the conduct of an investigation but is also a member of a bargaining unit. Bargaining unit members do not become exempt employees simply because they are given some supervisory responsibilities.

The definition of the term ''department or subdivision'' remains at § 541.104, and the definition of ''two or more employees'' remains at § 541.105. The Department invites comments on whether the supervision of ''two or more employees'' required for exemption should be modified to include ''the customary or regular leadership, alone or in combination with others, of two or more other employees.''

Section 541.106 of the current regulations, entitled ''Authority to hire or fire,'' is proposed to be deleted. The text in this section does not contribute to any further explanation of the requirement, and no further explanation seems necessary. Section 541.107 of the current regulations, entitled ''Discretionary powers,'' and § 541.112 of the current regulations, ''Percentage limitations on nonexempt work,'' are also deleted from the proposed rule for the reasons discussed above.

Subpart C, Administrative Employees, §§ 541.200–.207

To qualify as an exempt administrative employee under the current regulations, an employee must be paid on a salary or fee basis at a rate of not less than $155 per week and meet the ''long'' duties test, or earn $250 per week and meet the ''short'' duties test. The long test requires that an exempt administrative employee have a primary duty of either performing office or non-manual work directly related to management policies or general business operations of the employer or the employer's customers; or performing functions in the administration of a school system, or educational establishment or institution, in work directly related to academic instruction or training. In addition, the current regulations require that an administrative employee: Customarily and regularly exercise discretion and

independent judgment; regularly and directly assist another exempt employee or perform work along specialized or technical lines requiring special training, experience or knowledge under only general supervision *or* perform special assignments and tasks under only general supervision; and devote no more than 20 percent (or as much as 40 percent in retail or service establishments) of work hours in a week to activities that are not directly and closely related to the performance of exempt work. The short test requires that the employee have a primary duty of performing office or non-manual work directly related to management policies or general business operations, which must include work requiring the exercise of discretion and independent judgment. Under both tests, when considering whether an employee's work is ''directly related to management policies or general business operations'' the regulations and the courts assess whether the work is ''related to the administrative operations of the business as distinguished from production''—known as the ''production versus staff dichotomy''—and whether the work is ''of substantial importance to the management or operation of the business.''

The current duties test for administrative employees is the most difficult to apply of all the duties tests. The requirement that the employee exercise ''discretion and independent judgment,'' for instance, has generated significant confusion and litigation, as noted in the GAO report discussed above. This rule has been interpreted to deny the exemption to an employee who follows a procedures manual, even though most employees in the modern workplace are required to operate within standard procedures. The ''production versus staff dichotomy'' also is difficult to apply uniformly in the 21st century workplace.

The proposed regulations at § 541.200 would retain the requirement that an exempt administrative employee have a ''primary duty'' of ''performing office or non-manual work related to the management or general business operations of the employer or the employer's customers,'' but replace the ''discretion and independent judgment'' requirement with a new requirement that the employee hold ''a position of responsibility'' with the employer.

The primary duty requirement of ''performing office or non-manual work related to the management or general business operations'' is defined in a new § 541.201. New § 541.201 clarifies that this requirement refers to the type of work performed by the employee and includes an illustrative list of the types of work areas that meet this requirement: tax, finance, accounting, auditing, quality control, purchasing, procurement, advertising, marketing, research, safety and health, personnel management, human resources, employee benefits, labor relations, public relations, government relations and similar activities. The Department invites comments on any other areas that should be included in this list and on any areas that should be deleted. Like the proposed changes to the executive exemption, the proposed administrative exemption focuses on ''primary duty'' and eliminates the percentage restrictions on non-exempt work currently required by the now-inoperative long duties test, for the same reasons discussed above under the executive exemption.

The proposed rule would also reduce the emphasis on the so-called ''production versus staff'' dichotomy in distinguishing between exempt and non-exempt workers, while retaining the concept that an exempt administrative employee must be engaged in work related to the management or general business operations of the employer or of the employer's customers. These changes are needed to reflect emerging case law in this area. For example, the court in *Piscione* v. *Ernst & Young,* 171 F.3d 527 (7th Cir. 1999), examined whether an employee's duties were directly related to Ernst & Young's management policies or general business operations or those of the firm's clients. The employee worked as a consultant in the firm's Human Resources Consulting Group on several multi-million dollar defined benefit plans and defined contribution plans in which thousands of individuals participated. The employee's work involved benefits calculations, actuarial valuations, government filings, compliance testing, and client advice. The court stated that this work influenced the internal business operations and policies of Ernst & Young's clients with regard to their benefit plans. The employee was the primary contact for several clients; the employee identified problems with their plans and suggested solutions, and the employee offered suggestions to clients regarding how to improve their efficiency. The court rejected the argument that, because the employee provided clients with reports and government forms to file, the work was production work. Rather, the employee was an advisory specialist or consultant whose work was exempt. In addition, the court found that the employee contributed to the management policies of Ernst & Young because the employee played a major role in developing new methods for improving client services and the timeliness of firm operations.

The proposed § 541.200 also contains a second requirement for the administrative exemption relating to the importance of the work performed or the high level of competence required by the work performed—a requirement that an exempt employee must hold a ''position of responsibility.'' The term ''position of responsibility'' is defined in the proposed regulations at new § 541.202. To meet this new ''position of responsibility'' requirement, an employee must either (1) perform work of substantial importance, or (2) employ a high level of skill or training. The concept of ''work of substantial importance'' has been in the interpretive regulations since 1950, as a factor for determining whether a worker is an exempt administrative employee. The proposed regulations at new § 541.204 define this phrase based on language in the current regulations and include a revised list illustrating the types of activities that are generally considered of ''substantial importance'' for purposes of the exemption including: Formulating or interpreting management policies; providing consultation and expert advice to management; making or recommending decisions that have a substantial impact on business operations or finances; analyzing and recommending changes to operating practices; planning long or short-term business objectives; analyzing data, drawing conclusions and recommending changes; and handling complaints, arbitrating disputes or resolving grievances. The Department invites comments on any additional activities that should be included in this list and on any activities that should be deleted. The second alternative for meeting the ''position of responsibility'' requirement, ''work requiring a high level of skill or training,'' defined in the proposed regulations at new § 541.205, would ensure that the administrative exemption is not denied to a highly trained and skilled employee who performs administrative functions merely because the employee uses a procedures manual, so long as the manual contains information that can only be interpreted properly by someone with a high level of specialized skills or training, as opposed to a manual in which the employee simply looks up the correct answer for a particular set of circumstances. As reflected in the GAO report noted above,

it has become commonplace for employees in the modern work place to use procedures manuals and written guidelines as standard practices for achieving quality control and efficiency.

The administrative exemption is the most challenging of the § 13(a)(1) exemptions to define and delimit, and the ''discretion and independent judgment'' requirement has become increasingly difficult to apply with uniformity in the 21st century workplace. Thus, the Department proposes to delete this requirement and replace it with the requirement that an employee hold a ''position of responsibility.'' The Department specifically seeks comments on whether the ''discretion and independent judgment'' requirement should be deleted entirely, retained as a third alternative for meeting the ''position of responsibility'' requirement, or retained by itself but modified to provide better guidance on distinguishing exempt administrative employees. The Department invites commenters to submit alternative proposed regulatory language for either ''discretion and independent judgment'' or ''position of responsibility.'' The Department solicits comment on how employers currently interpret the ''discretion and independent judgment'' requirement, and whether individuals currently exempt under that requirement would continue to be exempt under the new ''position of responsibility'' requirement.

Finally, the proposed regulations also would reorganize, simplify, streamline and update the regulations in other ways. The proposed regulations utilize objective, plain language; eliminate outdated and uninformative examples; and update definitions of key terms and phrases. As with the executive exemption, the proposal for the administrative exemption would move a number of sections pertaining to salary issues (current §§ 541.211, 541.212 and 541.213) to subpart G, and other sections relevant to several or all of the exemption categories would move to the proposed subpart H (Definitions and Miscellaneous Provisions) to eliminate unnecessary repetition. For example, current § 541.203 entitled ''Nonmanual work'' is moved to proposed new § 541.703. Current § 541.206 entitled ''Primary duty'' is merged with current § 541.103 and moved to proposed new § 541.700. Current § 541.208 entitled ''Directly and closely related'' is combined with current §§ 541.108, 541.202, and 541.307 and moved to proposed new § 541.702. Current § 541.210 entitled ''Trainees, administrative'' is combined with current § 541.116 (''Trainees, executive'') and current § 541.310 (''Trainees, professional'') and moved to proposed new § 541.704. Provisions related to the administration of educational institutions in current §§ 541.2, 541.201(c), 541.202(e), and 541.215 have been consolidated and moved to new § 541.206; no substantive changes are intended by this consolidation.

Subpart D, Professional Employees, §§ 541.300–.304

The current regulations pertaining to the professional exemption contain four separate categories of exempt employees: learned professionals, artistic professionals, teachers, and computer professionals. As with the executive and administrative exemptions, the regulations contain both ''short'' and ''long'' duties tests, depending upon the salary level of the employee. The long test contains a separate primary duty requirement for each of the four categories of employees. The long test for learned professionals requires that the primary duty consist of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes. For creative professionals, the primary duty must consist of work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee. For teachers, the primary duty must consist of teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge by an employee who is employed and engaged in this activity as a teacher in the school system or educational establishment or institution by which the person is employed. The duties tests for computer employees are discussed in subpart E. The long test also requires that an exempt employee: Perform work requiring the consistent exercise of discretion and judgment; do work that is predominantly intellectual and varied in character, such that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and devote no more than 20 percent of work hours in a week to activities that are not an essential part of and necessarily incident to exempt work. The short test in the current regulations for both learned professionals and teachers contains the specific primary duty requirement discussed above, and requires that the employee perform work requiring the consistent exercise of discretion and judgment. For artistic professionals, the work must require invention, imagination or talent in a recognized field of artistic endeavor.

The proposed regulations pertaining to the professional employee exemption would make changes similar to those we propose for the executive and administrative exemptions. The goal is to clarify and simplify the regulations defining the professional employee exemption, while remaining consistent with the purposes of the FLSA. For ease of reference, and making no substantive changes, we propose to move the provisions pertaining to computer professionals to new subpart E, which will contain all information pertinent to such employees. We also propose to simplify the regulations by eliminating the separate short and long tests for each of the remaining three categories and substituting a single standard duties test for each. This restructuring and simplification would eliminate the percentage limitation on nonexempt work and the consistent exercise of discretion and judgment requirement. As discussed above in connection with similar proposed changes to the executive and administrative exemptions, we are proposing to eliminate these subsections because they have proven difficult standards to apply uniformly.

For learned professionals, the proposed new standard test in § 541.301 would provide that employees qualify for exemption as a learned professional if they have a primary duty of performing office or non-manual work requiring advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction, but which also may be acquired by an equivalent combination of intellectual instruction and work experience. This proposed standard test for learned professionals would focus on the knowledge of the employee and how that knowledge is used in everyday work, not on the educational path followed to obtain that knowledge. Although some flexibility to focus on the worker's knowledge exists in the current regulation, it is very limited and rarely used. The clarified test reflects changes in the 21st century workplace in how some ''knowledge workers'' acquire specialized learning and skills: in the modern workplace, some

employees acquire advanced knowledge through a combination of formal college-level education, training and work experience, even where other employees in that field customarily acquire advanced knowledge by obtaining a baccalaureate or advanced degree. The proposed changes would clarify that, so long as such an employee's level of advanced knowledge is equivalent to the knowledge possessed by an employee with the typical academic degree generally required by the profession, the employee may qualify as an exempt professional. Thus, for example, an employee who obtained advanced knowledge by completing college courses in a field such as engineering, and who worked in that field for a number of years, could qualify for exemption if the knowledge acquired was equivalent to that of an employee with a baccalaureate degree in engineering. We have not proposed any specific formula in the regulations for determining the equivalencies of intellectual instruction and qualifying work experience, although some examples from the current rule have been included and expanded. Public comments are invited on whether the regulations should specify such equivalencies.

The view that several years of specialized training plus intensive on-the-job training for a number of additional years may be equated with a college degree in certain fields has found support in reported judicial decisions. For example, the professional exemption has been applied to employees with a combination of training and academics in *Leslie* v. *Ingalls Shipbuilding, Inc.,* 899 F. Supp. 1578 (D. Miss. 1995). In Leslie, the court concluded that an employee who had completed three years of engineering study at a university and had many years of experience in the field of engineering was properly classified as a professional employee, even though the employee did not satisfy one of the usual minimum qualifications for an engineering position of having a bachelor's degree in an engineering discipline. The court considered the employee's combination of education and experience as satisfying the requirement for a prolonged course of specialized intellectual instruction and study.

For creative professionals, we propose to adopt the current short test, slightly modified, as the new standard test in proposed § 541.302. This new standard test would apply the creative professional exemption to any employee with the primary duty of ''performing work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.'' This language, although simplified, is not intended to make any material changes from the existing regulations. This standard was applied in the case of *Freeman* v. *National Broadcasting Company, Inc.,* 80 F.3d 78 (2nd Cir. 1996), in which employees who researched facts, developed story elements, interviewed subjects, wrote scripts, and supervised the editing of videotape were deemed to have been correctly classified as artistic professional employees. On the other hand, employees of small news organizations who spent their time gathering facts about routine community events such as municipal, school board, and city council meetings, and gathering information from the police blotter and real estate transaction reports, and then reporting those facts in a standard format were deemed not to be artistic professional employees in *Reich* v. *Newspapers of New England,* 44 F.3d 1060 (1st Cir. 1995) and *Reich* v. *Gateway Press, Inc.,* 13 F.3d 685 (3d Cir. 1994).

The standard test for teachers in proposed section 541.303 would be unchanged from the current short test, with the exception of the deletion of the requirement that the employee's work require the consistent exercise of discretion and judgment, a requirement that, as discussed above, has engendered significant confusion. Provisions on teachers from current §§ 541.3, 541.301(g), and 541.314 have been consolidated into proposed new § 541.303. The minor editorial changes are not intended to cause any substantive changes.

In addition, the proposed regulations utilize objective, plain language that can be easily understood by employees, small business owners and human resource professionals, and eliminate outdated and uninformative examples. The proposed regulations also would address a number of specific occupations that have been the subject of ambiguity and litigation. For example, we propose to update and clarify the circumstances under which employees working as newspaper journalists or as radio or television commentators are exempt, because the case law regarding such employees has been evolving over the years, and the existing regulations discussing such employees are outdated.

Provisions of the current regulations in §§ 541.3 and 541.314 that provide an exception to the salary or fee requirements for physicians and lawyers have been consolidated and moved to proposed § 541.304. Current § 541.307 entitled ''Essential part of and necessarily incident to'' has been combined with current § 541.108 (''Work directly and closely related''), 541.202 (''Categories of work''), and § 541.208 (''Directly and closely related''), and moved to proposed new § 541.702 (''Directly and closely related''), for a streamlined discussion of the principles for distinguishing exempt and nonexempt work. Although these sections have been consolidated and simplified, we do not intend any substantive changes.

Finally, we propose to move sections that pertain to salary issues (§§ 541.311, 541.312 and 541.313) to subpart G, where all such issues will be consolidated. Other sections relevant to several or all of the exemption categories (such as the definition of primary duty, a section regarding application of the exemption to trainees, and a section discussing nonexempt work generally) would move to the proposed subpart H (Definitions and Miscellaneous Provisions) to eliminate unnecessary repetition. Current § 541.305 entitled ''Discretion and judgment'' and current § 541.309 entitled ''20-percent nonexempt work limitation'' have been deleted from the proposed regulations for the same reasons similar changes are being proposed in the executive and administrative exemptions as discussed above.

Subpart E, Computer Employees Exemption, §§ 541.400–.403

The exemption for employees in computer occupations has a unique legislative and regulatory history. Prior to 1991, the interpretative regulations acknowledged that employees in various computer-related occupations could have supervisory or managerial duties meeting the exemption for ''executive'' or ''administrative'' employees, provided that all the applicable regulatory tests were otherwise met. However, the regulations did not recognize computer employees as exempt ''learned'' professionals absent a showing that specialized, prolonged academic education and training was an essential prerequisite for entry into the computer field. At the time, colleges and universities did not consistently recognize computer sciences as a *bona fide* academic discipline under which standard licensing, certification, or registration procedures were being followed. Thus, before 1990, employees in computer occupations were rarely recognized as exempt ''learned'' professionals and many also did not perform duties

meeting all the requirements for the executive or administrative exemptions. Of course, much has changed since then, and today ''computer scientists'' who possess advanced academic degrees in the computer field are routinely recognized as exempt professionals.

In November 1990, Congress enacted legislation directing the Department to issue regulations permitting computer systems analysts, computer programmers, software engineers, and other similarly-skilled professional workers to qualify for exemption under FLSA section 13(a)(1). This enactment also extended the exemption to employees in such computer occupations if paid on an hourly basis at a rate at least 6½ times the minimum wage. Final implementing regulations were issued in 1992 following public notice and comment procedures (*see* 29 CFR 541.3(a)(4) and 541.303; 57 FR 46744, Oct. 9, 1992; 57 FR 47163, Oct. 14, 1992). However, when Congress increased the minimum wage in 1996, that law included some of the Department's regulatory language as a separate statutory exemption under a new FLSA section 13(a)(17). The 1996 enactment also froze the hourly compensation test at $27.63 (which equaled 6½ times the former $4.25 minimum wage). The original 1990 statute was not affected by the 1996 enactment.

Accordingly, under the current regulations, an exempt computer employee must have a primary duty of performing work requiring theoretical and practical application of highly-specialized knowledge in computer systems analysis, programming, or software engineering. In addition, an exempt computer employee must be engaged in performing these activities as a computer systems analyst, computer programmer, software engineer, or other similarly-skilled worker in the computer software field. Finally, under the current regulations, an exempt computer employee must consistently exercise discretion and judgment, and be paid not less than $250 per week on a salary basis or not less than $27.63 an hour if paid an hourly rate.

The proposed regulations would consolidate and condense all of the regulatory guidance on the computer occupations exemption into a new regulatory subpart E by combining provisions of the current regulations found at §§ 541.3(a)(4), 541.205(c)(7), and 541.303. This new subpart will collect in one place the substance of the original 1990 enactment, the 1992 final regulations, and the 1996 enactment. The key regulatory language that resulted from the 1990 enactment is now substantially codified in section 13(a)(17) of the Act, and thus no substantive changes have been made to that language. However, consistent with changes in the professional exemption, the proposal deletes the additional requirement that an exempt computer employee must consistently exercise discretion and judgment. Further, the former regulatory text has been edited and streamlined to provide a more concise presentation, and the structure has been modified to conform to similar changes proposed in the professional exemption. Because of the tremendously rapid pace of significant changes occurring in the information technology industry, we have avoided citing specific job titles as examples of exempt workers, as they tend to quickly become outdated once included in the regulatory text. The Department recognizes that the computer employee exemption has been particularly confusing, and invites comments on any further clarifications possible under the statute.

Subpart F, Outside Sales Employees, §§ 541.500–.504

Section 13(a)(1) of the FLSA contains a specific and separate exemption for any employee employed ''in the capacity of outside salesman.'' Under the existing regulations, outside sales employees must be customarily and regularly engaged away from the employer's places of business making sales or obtaining orders or contracts for services or the use of facilities. (''Inside sales'' employees are not within the scope of this statutory exemption for ''outside sales'' employees.) The regulatory interpretations examine whether any given employee's chief duty or primary function is to make sales or take orders while away from the employer's premises, by analyzing the character of the job as a whole, to distinguish exempt outside sales employees from other nonexempt occupations (*e.g.*, route delivery personnel).

Under the current regulations, outside sales employees also may not exceed a 20 percent tolerance, per work week, performing duties unrelated to their own outside sales or solicitations. Activities that are incidental to, and in conjunction with, their own outside sales or solicitations, including incidental deliveries and collections, are not counted against the 20 percent nonexempt work limitation. The 20 percent limit is based not upon the employee's own hours of work performed, but upon the hours worked by other nonexempt employees of the employer who perform the kind of nonexempt work performed by the outside sales employee. If no one else performs such nonexempt work, the base applied is 40 hours, and the amount of nonexempt work allowed is eight hours per week. There is no salary or fee requirement for the outside sales employee exemption.

In keeping with similar proposed changes to the other exemptions in this part, and to simplify the outside sales exemption, the Department proposes to adopt a primary duty concept similar to the other exemptions, and to eliminate the particularly confusing 20 percent restriction on nonexempt work by outside sales employees. By eliminating this percentage limitation, the Department proposes to avoid any necessity that the employer track hours of outside sales employees. This will provide a consistent approach between this exemption and the exemptions for executive, administrative and professional employees. The essential elements required for exemption would continue, *i.e.*, the outside sales employee's primary duty must be to make sales or obtain orders or contracts for services or the use of facilities, and the employee must be customarily and regularly engaged away from the employer's place of business performing such duty. Outdated illustrations and redundant examples have also been deleted from the regulations, but no substantive changes are intended by these deletions. Finally, although the FLSA refers to the ''outside salesman,'' we propose replacing this gender-specific term and refer instead to the ''outside sales employee.'' The discussion of nonexempt work generally in current § 541.506 has been incorporated into proposed new § 541.701, and the discussion of outside sales trainees in current § 541.508 has been incorporated into proposed new § 541.704. As noted above and in connection with similar proposed changes to the executive, administrative and professional exemptions, the 20-percent limitation on nonexempt work in current § 541.507 is proposed to be deleted.

Subpart G, Compensation Requirements, §§ 541.600–.606

Salary Levels

Salary level tests have been included as part of the exemption criteria since the original regulations of 1938. Under the current rules, most executive, administrative and professional employees must earn a minimum salary

level to qualify for the exemption.[14] Employees paid below the minimum salary level are not exempt, irrespective of their job duties and responsibilities. Employees paid a salary above the minimum level in the regulations may be exempt if they also meet the salary basis and job duties tests.

To qualify for exemption under the existing regulations, an employee currently must earn a minimum salary of $155 per week for the executive and administrative exemptions, and $170 per week for the professional exemption. Employees paid above these minimum salary levels must meet a ''long'' duties test to qualify for the exemption. The current regulations also provide that employees paid above a higher (or ''upset'') salary rate of $250 per week are exempt if they meet a ''short'' duties test. As explained above, the short tests contain fewer requirements and are less burdensome to meet.[15] The most recent updates to these minimum salary levels were in 1975. In January 1981, revisions to increase the salary rates by the outgoing Carter Administration were stayed indefinitely by the incoming Reagan Administration. Because the salary levels have not been increased since 1975, the existing salary levels are outdated and no longer useful in distinguishing between exempt and nonexempt employees.

Proposed Standard Test. Under the proposal, the minimum salary level to qualify for exemption from the FLSA minimum wage and overtime requirements as an executive, administrative, or professional employee would be increased from $155 per week to $425 per week. This salary level would be referred to as the ''standard test,'' thus eliminating the ''short test'' and ''long test'' terminology. The separate, higher salary level test for professional employees also would be eliminated.

Most stakeholders agreed that the salary levels need to be increased. A full-time minimum wage worker earns $206 per week ($5.15/hour x 40 hours)—an amount above the current long test levels and closely approaching the current short test level. As a result, under the current regulations, no full-time salaried worker is automatically exempt by earning below the long test level, and most salaried employees are tested for exemption under the short tests. Salary level was once viewed as being the best indicator of exempt status. Today, the existing salary level tests are of no help in distinguishing exempt employees from non-exempt workers. Accordingly, the question is not whether the Department should raise the salary levels, but by how much.

One suggestion for increasing the current salary levels is to adjust the existing rates, adopted in 1975, to account for inflation. The 1999 General Accounting Office report adjusted the 1975 salary levels for inflation based on 1998 BLS Consumer Price Index (CPI) data, resulting in the following salary levels: $470/week for the executive and administrative long test; $515/week for the professional long tests; and $757/week for the short test.[16] In January 2001, the Department published a report that applied 1999 CPI data to inflation adjust the current salary levels to $480/week for the long test and $774/week for the short test.[17]

However, several considerations weigh against mechanically adjusting the 1975 salary levels for inflation. First, the Department is proposing a different, standard duties test. Consequently, equivalency to either the current long and short test salary levels is not appropriate. Second, although adjusting the existing rates for inflation might provide the simplest, mechanical approach, the Department is concerned about the impact such adjusted salary levels would have on certain segments of industry and geographic areas of the country, particularly in the retail industry and in rural areas in the South, which tend to pay lower salaries. Third, mechanically adjusting for inflation presumes that the salary levels set in 1975 are precisely the appropriate baseline; and that the nature of work and the relationship between job duties and compensation practices have not changed in the intervening years since 1975. Fourth, the regulatory history has looked to information on actual salaries and incomes, not inflation-adjusted amounts. The 1949 Weiss Report, for example, considered and rejected proposals to increase salary levels based upon the change in the cost of living from the 1940 levels.[18]

Because of these concerns, the Department believes it would be more appropriate to examine available data on actual salary levels currently being paid in the economy. We reviewed a preliminary report on actual salary levels based on the BLS year 2000 Current Population Survey (CPS) Outgoing Rotations data set. This data included full-time, salaried workers aged 16 and above, but excluded the self-employed, agricultural workers, volunteers and federal employees (who are all not subject to the salary level tests in the part 541 regulations), broken out by industry and geographic area.

In considering this data and various salary levels in the development of this proposal, the Department was guided by the prescient analysis of a 1958 Department of Labor report recommending changes to the salary levels:

> The salary tests have thus been set for the country as a whole * * * with appropriate consideration given to the fact that the same salary cannot operate with equal effect as a test in high-wage and low-wage industries and regions, and in metropolitan and rural areas, in an economy as complex and diversified as that of the United States. Despite the variation in effect, however, it is clear that the objectives of the salary tests will be accomplished if the levels selected are set at points near the lower end of the current range of salaries for each of the categories. Such levels will assist in demarcating the ''*bona fide*'' executive, administrative and professional employees without disqualifying any substantial number of such employees.
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> It is my conclusion, from all the evidence, that the lower portion of the range of prevailing salaries will be most nearly approximated if the tests are set at about the levels at which no more than about 10 percent of those in the lowest-range region, or in the smallest size establishment group, or in the smallest-sized city group, or in the lowest-wage industry of each of the categories would fail to meet the tests. Although this may result in loss of exemption for a few employees who might otherwise qualify for exemption, * * * in the light of the objectives discussed above, this is a reasonable exercise of the Administrator's authority to ''delimit'' as well as define.[19]

As in the 1958 analysis, the Department looked to ''points near the

[14] There is no salary level test for outside sales employees and some professional employees (teachers, doctors, lawyers). Such employees are exempt regardless of their salary.

[15] Also, in 1996, Congress amended the FLSA to exempt certain hourly-paid computer professionals paid at least $27.63 per hour ($57,470 per year, assuming 40 hours per week).

[16] Fair Labor Standards Act: White Collar Exemptions in the Modern Work Place, GAO/HEHS–99–164, September 30, 1999.

[17] The ''New Economy'' and Its Impact on Executive, Administrative and Professional Exemptions to the Fair Labor Standards Act (FLSA), January 2001, pp. 71–73.

[18] ''Actual data showing the increases in the prevailing minimum salary levels of bona fide executive, administrative and professional employees since October 1940 would be the best evidence of the appropriate salary increases for the revised regulations. * * * The change in the cost of living which was urged by several witnesses as a basis for determining the appropriate levels is, in my opinion, not a measure of the rise in prevailing minimum salary levels.'' Weiss Report, p. 12.

[19] Report and Recommendations on Proposed Revision of Regulations, Part 541 under the Fair Labor Standards Act, March 3, 1958, by Harry S. Kantor, Assistant Administrator, Presiding Officer.

lower end of the current range of salaries'' to determine an appropriate salary level for the standard test—although we settled upon on the lowest 20 percent, rather than the lowest 10 percent, because of the proposed change from the ''short'' and ''long'' test structure in the proposed rule and because the data included some salaried employees who would not meet the duties tests for exemption. Applying this analysis, and also considering adjustments to the current salary levels for inflation, the Department proposes a standard salary level test of $425/week. Under this level, approximately the bottom 20 percent of salaried employees would fall below the minimum salary requirement and be automatically entitled to overtime pay.

Proposed special rule for highly compensated employees. The proposed regulations also include in § 541.601 a special, streamlined rule for employees paid $65,000 or more annually. Under this proposed rule for highly compensated employees, employees paid $65,000 or more annually and performing non-manual work would be exempt if they have an identifiable executive, administrative or professional function as described in the standard duties tests. These highly compensated employees would not have to meet all the elements of the standard duties test to qualify for the exemption as a highly compensated employee. For example, an employee who supervises two workers but does not participate in any hiring or termination decisions in the company would still be exempt because the employee has a function that is identifiable as an executive function. In addition, the proposed special rule for highly compensated employees would permit counting base salary, commissions, non-discretionary bonuses and other non-discretionary compensation in determining whether an employee earns $65,000 or more annually. To qualify as a highly compensated employee under the proposed regulation, any commissions or non-discretionary bonuses would have to be settled and paid out to the employee as due on at least a monthly basis. An employee who works only a portion of a year, whether because the employee begins work during the year or leaves before the end of the year, must be guaranteed a *pro rata* portion of the $65,000 annual guarantee. The pro rata portion should be based upon the number of weeks the employee works in such a position. If an employee's total annual compensation does not total at least the guaranteed $65,000 by the end of the year, the proposed regulation would allow the employer to make a payment by the next pay period sufficient to bring the employee to the guaranteed level. The employer is not required to make this payment; however, if the employer elects not to make the one-time payment, the employee is not exempt as a highly compensated employee.[20]

To determine an appropriate salary level for highly compensated employees, the Department looked to points near the higher end of the current range of salaries and found that the top 20 percent of all salaried employees earned above $65,000 annually. This level is consistent with setting the proposed standard test salary level at the bottom 20 percent of salaried employees.

Puerto Rico, Virgin Islands and American Samoa. Prior to the Fair Labor Standards Amendments of 1989 (Pub. L. 101–157), Puerto Rico, the Virgin Islands, and American Samoa were subject to wage order proceedings under the Act, in lieu of the FLSA minimum wage, and consequently lower salary test levels traditionally were established for employees in these jurisdictions. The 1989 Amendments removed Puerto Rico and the Virgin Islands from the Act's wage order proceedings, and provided that the U.S. mainland minimum hourly wage rates under section 6(a)(1) of the Act would apply in Puerto Rico and the Virgin Islands. For this reason, the proposed regulations would apply the mainland salary test level of $425 per week in Puerto Rico and the Virgin Islands. Employees in American Samoa remain subject to wage order proceedings under the Act. Consequently, the proposed regulations would apply a special, lower salary test level of $360 per week for executive, administrative and professional employees in American Samoa. This special salary level maintains approximately the same ratio to the mainland test in the current regulations (84% for executive and administrative workers). Similarly, the proposal would apply a special test for highly compensated employees in American Samoa of $55,000 annually. Comments are invited on whether the 84 percent ratio is appropriate.

Comments on salary levels. The Department invites comments on these proposed salary levels and on any alternative salary level amounts or methodologies for determining the appropriate salary level. In addition, the Department invites comments on the alternative of removing the salary tests from the regulations entirely and on how the regulations could be structured without the need for any specific salary amounts (relying only on duties tests, for example). The Department also invites comments on the alternative of adopting a ''salary only'' test for highly compensated employees. Under such an alternative, for example, employees performing non-manual or office work and earning a total annual compensation over a certain amount would automatically be considered exempt, without any reference to the employee's duties.

Salary Basis Test

Under the current regulations, to qualify for the executive, administrative or professional exemption, an employee must be paid on a ''salary basis'' as defined in § 541.118. The employee must regularly receive a predetermined amount of salary, on a weekly or less frequent basis, that ''is not subject to reduction because of variations in the quality or quantity of the work performed.'' Thus, with a few exceptions described below, the employee must receive the full salary for any week in which the employee performs any work without regard to the number of days or hours worked.

The salary basis test prohibits an employer from making deductions from the salary ''for absences occasioned by the employer or by the operating requirements of the business.'' In other words, ''if the employee is ready, willing, and able to work, deductions may not be made for time when work is not available.'' However, the employee does not have to be paid for any work week in which he or she performs no work.

The current salary basis test also prohibits deductions from pay for disciplinary problems, performance issues or for absences caused by jury duty, attendance as a witness, or temporary military leave (although employers may take offsets for jury or military pay) in any week in which an employee performs any work.

The current regulations contain several exceptions to these salary basis rules: An employer may make deductions from the guaranteed pay ''when the employee absents himself from work for a day or more for personal reasons, other than sickness or accident.'' Deductions also are permitted for absences of a day or more due to sickness or disability, if taken in accordance with a *bona fide* plan, policy or law (workers compensation, for example) providing wage

[20] Of course, if all of the requirements in either the executive, administrative or professional employee tests established in §§ 541.100, 541.200 or 541.300 are satisfied, the employer still would be able to claim the appropriate exemption.

replacement benefits. Employers also may make deductions from an exempt employee's salary for any hours not worked in the initial and final weeks of employment or for hours taken as unpaid FMLA leave without affecting the exempt status of the employee. Finally, less than full week deductions from pay are permitted for violations of major safety rules.

Under the current rules, an employer can lose the exemption for an entire class of employees for making improper deductions from guaranteed pay, even for highly paid employees. Depending on the facts, improper deductions can ''indicate that there was no intention to pay the employee on a salary basis. In such a case, the exemption would not be applicable to him during the entire period when such deductions were being made.'' For inadvertent mistakes, however, the regulations provide employers with a ''window of correction.'' If the facts demonstrate that the prohibited deduction from guaranteed pay was inadvertent, the exemption is not lost if the employer reimburses the employee for such deductions and promises to comply in the future.

In developing options for its proposed rule, the Department considered whether to eliminate the salary basis test. We carefully weighed the need for the salary basis test and concluded that the underlying concept of the test '' guaranteed pay, not subject to reduction because of variations in the quality or quantity of the work performed '' should be retained. The nearly universal practice of paying employees with the requisite status to be bona fide executive, administrative, or professional employees on a salary basis, as the 1949 hearings on the exemption revealed, reflected the understanding that such employees have discretion to manage their time and are not answerable for the number of hours worked or the number of tasks performed. Such employees are not paid by the hour or task, but for the general value of services performed. The salary basis test also describes the *quid pro quo* enjoyed by exempt employees, which distinguishes them from non-exempt workers. Exempt employees are not paid overtime for working over 40 hours in a week. In exchange, the employer must provide a guaranteed salary that cannot be reduced when an employee works less than 40 hours.

The Department also considered amending the salary basis test to permit deductions from pay for cases in which an exempt employee chooses to be absent for a part of a day. But allowing such ''pay docking'' for partial-day absences would breach the quid pro quo and blur the line between exempt and non-exempt employees. An exempt manager, for example, does not receive extra pay for working 16 hours on a Thursday to complete a project; thus, as a matter of fundamental fairness, an employer should not be allowed to dock the employee's salary for leaving work early on Friday. Of course, an employer can terminate an employee who abuses this salary arrangement.

Although the proposed rule retains the salary basis test and its concept of guaranteed pay in proposed § 541.602, two significant updates are included in the proposal: *Disciplinary Deductions.* The proposed regulations would allow an exception to the no pay-docking rule for deductions from pay for full-day disciplinary suspensions. For example, an employer would be permitted to suspend an exempt employee without pay for reasons such as sexual harassment or workplace violence. The current regulations permit such deductions only for penalties imposed for infractions of safety rules of major significance and for unpaid suspensions for one or more full work weeks (*i.e.*, Monday to Friday). The proposed change would allow employers to suspend exempt employees without pay for discriminatory harassment for two days, four days or 10 days, as appropriate to respond to the misconduct. The Department believes this is a common-sense change that will permit employers to uniformly hold exempt employees to the same standards of conduct as that required of nonexempt, hourly workers. *Safe Harbor Provision.* Under the current regulations, an employer who makes improper deductions from pay can lose the exemption for an entire class of employees. However, as mentioned above, the current rules also include a ''window of correction'' provision at 541.118(a)(6) under which an employer who inadvertently makes impermissible deductions can, in some circumstances, retain the exemption by reimbursing employees for any improper deductions. Unfortunately, the ''window of correction'' has proved difficult for the Department to administer and has been the source of considerable litigation. The proposed rule, at 541.603, would clarify the circumstances and the extent to which an improper deduction causes an employee or groups of employees to become nonexempt. The proposed rule maintains the underlying purpose of the current rule that an employer does not lose the FLSA exemption because of isolated incidents of improper pay deductions. Under the proposal, the exemption would be lost only if there is a pattern and practice of improper deductions, and then only for employees in the same job classification and working for the same manager who is responsible for the improper pay docking decision or policy. For example, if one manager at a single company facility routinely docks the pay of engineers for partial-day absences, then all engineers at that one facility whose pay could have been docked by that same manager are not exempt. Engineers at other facilities or working for other managers would remain exempt. Further, the proposed rule would create a new ''safe harbor'' provision: if an employer has a written policy prohibiting improper pay deductions, notifies employees of that policy and reimburses employees for any improper deductions, then that employer would not lose the exemption for any employees unless the employer's policy prohibiting improper deductions is repeatedly and willfully violated. The Department believes this approach would be much easier to apply uniformly and more consistent with the purposes of the FLSA.

Proposed section 541.604 continues the guidance from current 541.118(b) on allowing payments of additional compensation besides the salary as not being inconsistent with the salary basis of payment, and on pay plans that compute an exempt employee's salary from daily or shift rates if accompanied by the minimum guarantee. The language has been clarified to add hourly compensation plans that include such guarantees, consistent with established enforcement practices, if a reasonable relationship exists between the guaranteed amount and an employee's usual earnings for a normal scheduled work week.

Proposed § 541.605 contains updated guidance on the ''fee basis'' of payment permitted for administrative and professional employees, taken from current sections 541.213 and 541.313. Proposed § 541.606 provides guidance on payment of required salary amounts ''exclusive of board, lodging or other facilities'' or ''free and clear,'' taken from §§ 541.117(c), 541.211(d), and 541.311(d) of the current regulations and expanded to cross-reference 29 CFR 531.32 for more guidance on qualifying ''other facilities'' similar to board and lodging.

The former ''upset salary'' provisions that were part of the short tests for executive, administrative and professional employees have been deleted from this proposed rule (current §§ 541.119, 541.214, and 541.315).

Subpart H, Definitions and Miscellaneous Provisions, §§ 541.700–.708

To eliminate unnecessary repetition, the proposed regulations would move definitions and other provisions applicable to several or all of the exemption categories to a new subpart H, Definitions and Miscellaneous Provisions. The proposed subpart H would define ''primary duty'' in proposed § 541.700; ''directly and closely related'' in proposed Section 541.702; ''exempt and nonexempt work'' in proposed § 541.701; and ''office or non-manual work'' in proposed § 541.703. Subpart H would also contain provisions regarding trainees, emergencies and occasional tasks, combination exemptions, the motion picture producing industry, and employees of public agencies. Most of these provisions have been moved from the existing regulations without substantial change, although some changes have been made to simplify and update the current regulations. Current § 541.602, containing guidance on the percentage limitations on performing nonexempt work for executive and administrative employees in multi-store retailing operations, is proposed to be deleted for the same reasons noted above for eliminating those former long duties test requirements from the executive and administrative exemptions.

IV. Executive Order 12866 and the Small Business Regulatory Enforcement Fairness Act

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that the proposed rule is an economically significant regulatory action under section 3(f)(1) of Executive Order 12866. Based on a preliminary analysis of the data the rule could have an annual effect on the economy of $100 million or more. However, the proposed rule is not likely to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; or materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.

For similar reasons, the Department has concluded that this proposed rule also is a major rule under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*). Although it could result in an annual effect on the economy of $100 million or more, it is not likely to result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

As a result, the Department has prepared a Preliminary Regulatory Impact Analysis (PRIA) in connection with this proposed rule as required under section 6(a)(3) of the Order and the Office of Management and Budget has reviewed the rule. Copies of the complete PRIA may be obtained from the Department by contacting the Wage and Hour Division at the address and telephone number provided above. The results of the PRIA are summarized below.

Preliminary Regulatory Impact Analysis

Overview

The proposed changes in the rules for determining whether an employee is exempt as an executive, administrative, or professional (EAP) worker under the Fair Labor Standards Act (FLSA) will affect virtually all employers covered by the FLSA that employ workers within the scope of the exemptions in 29 CFR part 541. Employers will be affected unless all of their employees are expressly excluded from FLSA coverage by the statute. Excluded from these regulations are the self-employed, agricultural workers, railroad workers, selected occupations in the transportation industries and in automobile dealerships, and most Federal employees subject to separate rules administered by the U.S. Office of Personnel Management. However, 29 CFR part 541 regulations apply to the following Federal agencies: Library of Congress, U.S. Postal Service, Postal Rate Commission, and Tennessee Valley Authority (see 29 U.S.C. 204(f)).

Therefore, employers in all industrial sectors except agriculture, railroads, and private households are subject to the existing and proposed regulations. The regulations also apply to State and local governmental employees.

The PRIA indicates that there are 6.5 million establishments with 109.5 million employees, annual payrolls totaling $2.8 trillion, annual sales revenues of $17.9 trillion, and annual pre-tax profits of $769.5 billion in the industry sectors affected by the proposed rule. Corresponding data based on SBA's size standards for small business entities indicates that over 5.2 million of these establishments are considered to be small businesses. These small firms employ approximately 38.7 million workers with an annual payroll of $940.0 billion. Their total annual sales are estimated to be $5.7 trillion and their annual pre-tax profits are estimated to be $233.9 billion. Approximately 79.8 percent of the affected establishments are considered to be small businesses and they account for 38.8 percent of the employment, 33.7 percent of the payroll, 31.8 percent of the annual sales, and 30.4 percent of the annual pre-tax profits.

Over 87,400 state and local governmental entities will be affected by the proposed rule (3,043 county governments, 19,372 municipal governments, 16,629 township governments, 34,683 special district governments, and 13,726 school district governments). Nationwide, these entities receive more than $1.4 trillion in general revenues, including revenues from taxes, some categories of fees and charges, and intergovernmental transfers. Their direct expenditures exceed $1.6 trillion in the aggregate. State and local governments employ more than 4 million workers and their payrolls exceed $12.6 billion per month.

The following tables summarize the provisions of the current 29 CFR part 541 and the proposed rule that were analyzed in the PRIA.

TABLE 1.—WEEKLY SALARY LEVELS IN THE CURRENT AND PROPOSED RULES

	Dollars
Current Rule	
Long Test:	
Executives	155
Administrative	155
Professionals	170
Short Test	250
Proposed Rule	
Standard Test	425
Highly Compensated	1,250

TABLE 2.—THE CURRENT AND PROPOSED DUTIES TESTS FOR EXECUTIVE EMPLOYEES

Current long test (salary and duties)	Current short test (salary and duties)	Proposed standard test (salary and duties)
$155 per week Primary duty of the management of the enterprise or a recognized department or subdivision. Customarily and regularly directs the work of two or more other employees. Has authority to hire or fire other employees (or recommendations as to hiring, firing, promotion or other change of status of employees is given particlar weight). Customarily and regularly exercises discretionary powers. Does not devote more than 20 percent (40 percent in retail or service establishments) of time to activities that are not directly and closely related to exempt work.	$250 per week Primary duty of the management of the enterprise or a recognized department or subdivision. Customarily and regularly directs the work of two or more other employees.	$425 per week. Primary duty of management of the enterprise or a recognized department or subdivision. Customarily and regularly directs the work of two or more other employees. Has authority to hire or fire other employees (or recommendations as to hiring, firing, promotion or other change of status of other employees is given particlar weight).

TABLE 3.—THE CURRENT AND PROPOSED DUTIES TESTS FOR ADMINISTRATIVE EMPLOYEES

Current long test (salary and duties)	Current short test (salary and duties)	Proposed standard test (salary and duties)
$155 per week Primary duty of performing office or non-manual work directly related to management policies or general business operations of the employer or the employer's customers. Customarily and regularly exercises discretion and independent judgment. Regularly and directly assists a proprietor, or exempt executive or administrative employee; or performs specialized or technical work requiring special knowledge under only general supervision; or executes special assignments under only general supervision. Does not devote more than 20 percent (40 percent in retail or service establishments) of time to activities that are not directly and closely related to exempt work.	$250 per week Primary duty of performing office or non-manual work directly related to management policies or general business operations of the employer or the employer's customers. Customarily and regularly exercises discretion and independent judgment.	$425 per week. Primary duty of performing office or non-manual work directly related to the management or general business operations of the employer or the employer's customers. Holds a ''position of responsibility'' with the employer, defined as either (1) performing work of substantial importance or (2) performing work requiring a high level skill or training.

TABLE 4.—THE CURRENT AND PROPOSED DUTIES TESTS FOR LEARNED PROFESSIONAL EMPLOYEES

Current long test (salary and duties)	Current short test (salary and duties)	Proposed standard test (salary and duties)
$170 per week Primary duty of performing work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study. Consistently exercises discretion and judgment. Performs work that is predominantly intellectual and varied in character and is of such character that the output produced or result accomplished cannot be standardized in relation to a given period of time.. Does not devote more than 20 percent of time to activities that are not an essential part of and necessarily incident to exempt work.	$250 per week Primary duty of performing work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study Consistently exercises discretion and judgment.	$425 per week. Primary duty of performing office or non-manual work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction, but which also may be acquired by alternative means such as an equivalent combination of intellectual instruction and work experience.

TABLE 5.—THE CURRENT AND PROPOSED DUTIES TESTS FOR CREATIVE PROFESSIONAL EMPLOYEES

Current long test (salary and duties)	Current short test (salary and duties)	Proposed standard test (salary and duties)
$170 per week	$250 per week	$425 per week.

TABLE 5.—THE CURRENT AND PROPOSED DUTIES TESTS FOR CREATIVE PROFESSIONAL EMPLOYEES—Continued

Current long test (salary and duties)	Current short test (salary and duties)	Proposed standard test (salary and duties)
Primary duty of performing work that is original and creative in character in a recognized field of artistic endeavor, and the result of which depends primarily on the invention, imagination, or talent of the employee. Consistently exercises discretion and judgment. Performs work that is predominantly intellectual and varied in character and is of such character that the output produced or result accomplished cannot be standardized in relation to a given period of time. Does not devote more than 20 percent of time to activities that are not directly and closely related to exempt work.	Performs work requiring invention, imagination, or talent in a recognized field of artistic endeavor.	Primary duty of performing work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

TABLE 6.—THE CURRENT AND PROPOSED DUTIES TESTS FOR COMPUTER EMPLOYEES

Current long test (salary and duties)	Current short test (salary and duties)	Section 13(a)(17) test (salary and duties)	Proposed Standard Test (salary and duties)
$170 per week	$250 per week	$27.63 an hour	$425 per week or $27.63 an hour.
Primary duty of performing work requiring theoretical and practical application of highly-specialized knowledge in computer systems analysis, programming, and software engineering.	Primary duty of performing work requiring theoretical and practical application of highly-specialized knowledge in computer systems analysis, programming, and software engineering.	Primary duty of (A) application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software of system functional applications; or (B) design, development, documentation analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user of system design specifications; or (C) design, documentation, testing , creation or modification of computer programs related to machine operating systems; or (D) a combination of duties described in (A), (B) and (C), the performance of which requires the same level of skills.	Primary duty of (A) application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software of system functional applications; or (B) design, development, documentation analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user of system design specifications; or (C) design, documentation, testing , creation or modification of computer programs related to machine operating systems; or (D) a combination of duties described in (A), (B) and (C), the performance of which requires the same level of skills.
Employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer software field. Consistently exercises discretion and judgment. Performs work that is predominantly intellectual and varied in character and is of such character that he output produced or result accomplished cannot be standardized in relation to a given period of time. Does not devote more than 20 percent of time to activities that are not directly and closely related to exempt work.	Employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer software field. Consistently exercises discretion and judgment.	Employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer software field.	Employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer software field.

TABLE 7.—THE CURRENT AND PROPOSED DUTIES TESTS FOR OUTSIDE SALES EMPLOYEES

Current long test (salary and duties)	Current short test (salary and duties)	Proposed standard test (salary and duties)
None required	None required	None required.

TABLE 7.—THE CURRENT AND PROPOSED DUTIES TESTS FOR OUTSIDE SALES EMPLOYEES—Continued

Current long test (salary and duties)	Current short test (salary and duties)	Proposed standard test (salary and duties)
Employed for the purpose of and customarily and regularly engaged away from the employer's place of business in making sales; or in obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer. Does not devote more than 20 percent of the hours worked by nonexempt employees of the employer to activities that are not incidental to and in conjunction with the employee's own outside sales or solicitations.	No separate ''short'' test	Primary duty of making sales; or of obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer Customarily and regularly engaged away from the employer's place or places of business.

Methodology for Estimating Costs

The principal database used in the PRIA is the 2001 Current Population Survey (CPS). A complete description of the methodology used for determining the employees who are potentially exempt and nonexempt from the overtime requirements of the current and proposed rule is contained in the PRIA available by contacting the Wage and Hour Division at the address and telephone number provided above.

The economic impact of the proposed rule includes two components: One-time implementation costs; and recurring incremental payroll costs incurred by employers for those employees presently treated as exempt from overtime under the current rule, who become nonexempt.

The implementation costs contain two parts. The first part includes the amount of time employers would take to: (1) Read and understand the proposed rule; (2) update and formulate their overtime policies; (3) notify employees of any changes; and (4) all other time taken to implement the proposed rule. The second part of the implementation costs is the amount of time employers would take to review their job categories to determine (1) whether or not a particular job category is exempt or nonexempt under the proposed rule, and (2) how to adjust to the new salary levels and duties tests. To estimate the implementation costs of the proposed rule, the department contacted six human resource specialists from around the country to obtain information on the amount of time small and large businesses would take for each of these activities. High and low estimates of the implementation costs were estimated by varying the amount of time taken to review job categories and other time taken to implement the proposed rule.

The second component of the economic impact of the proposed rule is the recurring incremental payroll costs incurred by employers for those employees presently treated as exempt from overtime under the current rule, who become nonexempt as a result of raising the salary levels and revising the duties tests.

Affected employers would have four choices concerning potential payroll costs: (1) Adhering to a 40 hour work week; (2) paying statutory overtime premiums for affected workers' hours worked beyond 40 per week; (3) raising employees' salaries to levels required for exempt status by the proposed rule; or (4) converting salaried employees' basis of pay to an hourly rate (no less than the federal minimum wage) that results in virtually no (or only a minimal) changes to the total compensation paid to those workers. Employers could also change the duties of currently exempt and nonexempt workers to comply with the proposed rule.

For the second choice above, paying overtime premium pay, employers typically have two options, with differing cost implications, for meeting their statutory overtime obligations. For example, assume an employer paid an employee a fixed salary of $400 per week with no overtime premium pay, for which the employee worked 45 hours per week, and the employer must now begin to pay this employee overtime pay. As one option, the employer could assume that the former weekly salary of $400 represents compensation for a standard 40-hour workweek, and pay this employee in the future time-and-one-half the $10 hourly rate for any overtime hours worked beyond 40 per week. For a 45-hour workweek, total compensation due, including overtime, would equal $475 ((40 hours × $10/hour) + (5 hours × $15/hour) = $475), compared to $400 formerly. As a second option, the employer could pay the fixed salary of $400 per week as total straight time pay for all hours worked in the week (provided it equals or exceeds the federal minimum wage), and pay additional ''half-time'' for each hour worked beyond 40 in the week. This method of payment is known as a ''fixed salary for fluctuating hours'' (*see* 29 CFR 778.114). For a 45-hour workweek, total compensation due under this method, including overtime, would equal $422.22 ($400 + (($400÷45) × ½ × 5) = $422.22).

The third choice above is straightforward—an employer could simply raise the salary level for currently exempt salaried workers earning less than $22,100 to at least the new proposed salary level or more and have them remain exempt salaried workers.

Nothing in the FLSA would prohibit an employer affected by the proposed rule, or under the current rule, from implementing the fourth choice above that results in virtually no (or only a minimal) increase in labor costs. For example, to pay an hourly rate and time and one-half that rate for 5 hours of overtime in a 45-hour workweek and incur approximately the same total costs as the former $400 weekly salary, the regular hourly rate would compute to $8.421 ((40 hours × $8.421) + (5 hours × (1.5 × $8.421)) = $399.99).

Most employers affected by the proposed rule would be expected to choose the most cost-effective compensation adjustment method that maintains the stability of their work force, pay structure, and output levels. Given the range of options available to an employer confronted with paying overtime to employees previously treated as exempt, the actual payroll cost impact for individual employers could range from near zero to up to the maximum cost impacts estimated in the Department's PRIA. However, for the PRIA it is was assumed that, for any nonexempt employee who satisfies the pertinent duties test, the employer will choose to pay the smaller of either the additional weekly salary required to qualify the employee for exemption or the usual weekly overtime payment for the employee. Thus, the Department's

assessment of costs of the proposed rule reflects a range of upper bound estimates. Actual payroll costs would be expected to be lower than the estimates summarized below and presented in the PRIA because of the payroll adjustment option employers have that could offset the impact of the proposed rule. Moreover, some of the cost is likely to be passed on to consumers in the form of higher prices, some of the cost is likely to be passed on to business owners and shareholders in the form of lower profits, and some of the cost is likely to be passed on to workers in the form of fewer overtime hours.

Finally, estimated costs are presented as ranges because data limitations prevent the Department from identifying exactly which workers are exempt and nonexempt based on the current and proposed duties tests. The estimates were determined using previous Department and U.S. General Accounting Office methodology and the latest data from the Bureau of Labor Statistics, the Census Bureau, and Dunn and Bradstreet. The ranges result from estimating a minimum and maximum number of workers that are likely to change from exempt to nonexempt employees. To estimate the recurring payroll costs of the proposed rule, it was necessary to apply some assumptions to the PRIA data to identify which employees are exempt and nonexempt under the current and proposed rules. Specifically, the Department assumed that for employees in occupations with a combination of exempt and nonexempt duties those with lower salaries would more likely be non-exempt. The Department also assumed that six years or more of work experience would be considered equivalent to a bachelor's degree for the learned professional exemption. For each occupational category with a combination of exempt and nonexempt duties a lower bound and an upper bound estimate of the number of employees who are exempt has been calculated. Finally, it was assumed that for each executive, administrative, or professional employee who becomes nonexempt, the likely incremental payroll cost is the smaller of the additional weekly salary required to qualify for exemption or the usual weekly overtime payment required to be paid to that worker.

Methodology for Estimating Benefits

The benefit estimates are lower bound estimates based on PRIA data and a Minimum Wage Study Commission report that estimated overtime violation rates by industry. The Department applied these rates to the overtime hours worked by salaried employees in the PRIA data, and then reduced these estimates by two-thirds to account for other types of overtime violations (off-the-clock-work, straight time for all hours) that occur in addition to violations of the ''white collar'' exemptions. The Department's high and low benefit estimates result from different assumptions on the lower costs associated with determining the exempt status of employees including conducting expensive time-and-motion studies and lower litigation costs, as well as the updated window of correction and safe harbor provisions in the proposed rule. The benefit estimates summarized below are lower bound estimates because they exclude significant, but difficult to quantify, benefits such as avoidance of the following additional costs which could be incurred by an employer who has misclassified employees as exempt: (1) The second and third years of overtime back pay allowed under the FLSA; (2) an amount equal to the back pay as liquidated damages; and (3) litigation costs, including attorney's fees. The benefit estimates also exclude the reduced human resource and legal costs for classifying workers under the proposed rule, and improved management productivity from reduced Department of Labor investigations and private litigation.

Three assumptions were applied to the PRIA data to estimate the benefits of the proposed rule; the Department requests comments on these and all assumptions used for the impact analysis. First, the overtime violation rates published by the Minimum Wage Study Commission in 1980 were assumed to apply today. Second, the Commission's overtime violation rates were reduced to account for other types of overtime violations (off-the-clock-work, straight time for all hours) that occur in addition to violations of the ''white collar'' exemptions. Finally, the Department's range of benefit estimates result from different assumptions on the impact of the updated window-of-correction and safe harbor provisions in the proposed rule. The Department welcomes comments and estimates from the public on the amount of benefits associated with these provisions and other significant, but difficult to quantify, benefits such as the reduced human resource and legal costs for classifying workers under the proposed rule, and improved management productivity from reduced investigations and litigation.

Total Costs and Benefits

The upper bound total cost estimate for the proposed rule ranges from $870.3 million to $1,575.5 million. This includes one-time implementation costs ranging from $535.4 million to $680.0 million and recurring payroll costs ranging from $334.8 million to $895.5 million. The lower bound total benefit estimate for the proposed rule ranges from $1,109.8 million to $1,972.7 million.

Private Sector Costs and Benefits

The upper bound private sector cost estimate for the proposed rule ranges from $849.2 million to $1,531.9 million. This includes one-time implementation costs ranging from $521.4 million to $660.3 million and recurring payroll costs ranging from $327.8 million to $871.6 million. The total private sector costs as a percentage of total payroll range from 0.03 percent to 0.05 percent for all industries, and from 0.11 percent to 0.21 percent of total pre-tax profits for all industries.

The lower bound private sector benefit estimate for the proposed rule ranges from $1,061.3 million to $1,886.5 million. These estimates include the impact of updating the window of correction and safe harbor provisions in the proposed rule but do not include significant, but difficult to quantify, benefits such as the reduced human resource and legal costs for classifying workers under the proposed rule, and improved management productivity from reduced investigations and litigation.

The largest total costs are incurred by the Health Services industry ($85.3 million to $163.4 million), Construction ($71.2 million to $119.1 million), Business Services ($54.1 million to $86.4 million), Personal Services ($38.1 million to $83.8 million), and Real Estate ($32.2 million to $71.4 million). The 10 industries with the highest costs account for over 50.4 percent of the total private sector costs.

Although the benefits of the proposed rule exceed the costs at the total level and for many of the major industry levels, there are some industries where the costs exceed the benefits (*see* Table 8). This result arises for three reasons. First, the costs are upper bound estimates and the benefits are lower bound estimates (*see* Methodology section above). The true net benefit for most industries could very well be positive. Second, a large increase in the salary levels raises the potential costs of the proposed rule. Finally, the industries most likely to bear the cost of the proposed rule are not necessarily the

industries most likely to receive the benefits. Most of the benefits come from the reduction in the potential legal liability from unintentionally misclassifying fairly high paid salaried workers working more than 40 hours per week in occupations with exempt and nonexempt duties, while most of the costs come from increasing the salary level tests for relatively low paid salaried workers. The PRIA data suggest that the number of workers in these two groups is often not equal at a detailed industry level. For example, because of the historical pattern of compensation levels in the Personal Services and Automotive Repair, Services, and Parking industries one would expect to find far more relatively low paid salaried workers affected by the proposed salary level tests than relatively high paid salaried workers unintentionally misclassified.

The largest total costs as a percentage of payroll are incurred by the Educational Services industry (0.37 percent to 0.98 percent), Agricultural Services (0.22 percent to 0.53 percent), Personal Services (0.21 percent to 0.46 percent), Automotive Repair, Services, and Parking (0.13 percent to 0.29 percent), and Transportation by Air (0.11 percent to 0.22 percent).

The largest recurring payroll costs as a percentage of pre-tax profits are incurred by the Educational Services industry (1.95 percent to 5.22 percent), Personal Services (1.38 percent to 3.03 percent), Automotive Repair, Services, and Parking (0.84 percent to 1.81 percent), Agricultural Services (0.54 percent to 1.26 percent), and Transportation by Air (0.54 percent to 1.07 percent).

TABLE 8.—SUMMARY OF COSTS AND BENEFITS FOR INDUSTRY SECTORS AFFECTED BY THE PROPOSED RULE

SIC	Industry description	Low implementation costs	High implementation costs	Low payroll costs	High payroll costs	Low total costs	High total costs	Low benefits	High benefits	Low difference	High difference
07	Agricultural Services [4]	$2,895	$4,020	$14,833	$37,529	$17,729	$41,549	$2,032	$3,612	−$15,697	−$37,937
08	Forestry [4]	83	113	27	58	110	171	346	614	235	444
09	Fishing, Hunting, & Trapping [4]	63	88	121	381	184	469	195	346	11	−123
	Agriculture Subtotal	3,042	4,221	14,981	37,968	18,023	42,188	2,572	4,573	−15,451	−37,616
10	Metal mining	121	146	0	0	121	146	185	328	64	182
12	Coal mining	239	293	119	346	358	639	647	1,150	289	511
13	Oil & gas extraction	1,431	1,820	856	1,882	2,287	3,701	4,525	8,044	2,238	4,342
14	Nonmetallic minerals, except fuels.	475	602	8	13	483	615	520	924	37	309
	Mining Subtotal	2,266	2,860	984	2,242	3,250	5,102	5,877	10,447	2,627	5,345
15–17	Construction	48,090	64,024	23,096	55,046	71,186	119,070	33,486	59,524	−37,700	−59,545
20	Food & kindred products	5,587	6,577	1,767	3,793	7,354	10,370	3,654	6,495	−3,700	−3,875
21	Tobacco products	87	100	83	197	169	297	110	195	−60	−102
22	Textile mill products	1,855	2,176	488	1,192	2,343	3,368	538	956	−1,806	−2,412
23	Apparel & other textile products	4,367	5,212	960	1,896	5,327	7,108	790	1,405	−4,537	−5,703
24	Lumber & wood products	5,746	6,917	804	2,103	6,550	9,021	922	1,639	−5,628	−7,382
25	Furniture & fixtures	2,454	2,918	371	1,068	2,824	3,986	727	1,292	−2,098	−2,694
26	Paper & allied products	2,034	2,383	826	1,754	2,860	4,137	1,484	2,638	−1,376	−1,500
27	Printing & publishing	10,260	12,319	3,607	16,921	13,867	29,240	3,554	6,318	−10,313	−22,922
28	Chemicals & allied products	3,118	3,678	2,969	11,299	6,087	14,977	5,892	10,473	−196	−4,504
29	Petroleum & coal products	481	569	910	1,637	1,390	2,206	776	1,380	−614	−826
30	Rubber & miscellaneous plastics products.	4,040	4,775	819	2,313	4,860	7,088	1,586	2,820	−3,274	−4,268
31	Leather & leather products	373	443	179	459	552	902	261	465	−291	−437
32	Stone, clay, & glass products	2,915	3,487	642	1,616	3,558	5,104	998	1,774	−2,560	−3,329
33	Primary metal industries	2,125	2,485	1,078	3,017	3,203	5,501	1,596	2,837	−1,607	−2,664
34	Fabricated metal products	7,498	8,927	1,993	4,837	9,491	13,764	1,942	3,452	−7,549	−10,311
35	Industrial machinery & equipment.	10,509	12,543	2,778	6,887	13,287	19,430	7,515	13,359	−5,772	−6,071
36	Electronic & other electric equipment.	5,180	6,076	3,768	8,860	8,948	14,936	6,759	12,014	−2,189	−2,922
37	Transportation equipment	4,689	5,469	5,207	11,883	9,896	17,352	5,352	9,513	−4,545	−7,839
38	Instruments & related products	3,032	3,573	1,911	4,940	4,943	8,512	3,057	5,435	−1,885	−3,078
39	Misc. manufacturing industries	2,886	3,470	1,281	3,727	4,167	7,196	1,220	2,169	−2,947	−5,027
	Manufacturing Subtotal	79,235	94,095	32,442	90,399	111,678	184,494	48,733	86,628	−62,944	−97,866
40	Railroad Transportation [5]	nc	nc	528	1,890	528	1,890	1,510	2,684	982	793
41	Local & interurban passenger transportation.	1,500	1,881	1,216	2,652	2,716	4,533	861	1,531	−1,854	−3,003
42	Motor freight transportation & warehousing.	8,873	11,271	3,415	7,879	12,288	19,150	7,722	13,727	−4,566	−5,423
43	U.S. Postal Service [6]	2,875	3,610	1,359	5,147	4,234	8,757	643	1,143	−3,591	−7,614
44	Water transportation	655	827	380	1,255	1,036	2,082	1,694	3,010	658	928
45	Transportation by air [7]	986	1,225	11,213	22,633	12,200	23,858	4,588	8,155	−7,612	−15,703
46	Pipelines, except natural gas	59	74	6	14	65	89	31	54	−35	−34
47	Transportation services	3,125	4,014	822	2,407	3,947	6,421	963	1,712	−2,984	−4,710
48	Communications	3,815	4,740	5,424	13,690	9,239	18,430	14,516	25,804	5,277	7,374
49	Electric, gas, & sanitary services	2,052	2,537	2,623	7,136	4,675	9,673	5,977	10,625	1,302	952
	Trans., Comm., & Pub. Util. Subtotal.	23,940	30,180	26,460	62,813	50,400	92,993	36,994	65,761	−13,406	−27,233
50	Wholesale trade—durable goods	25,544	32,579	4,334	10,296	29,877	42,875	38,356	68,182	8,479	25,307
51	Wholesale trade—nondurable goods.	14,764	18,738	4,538	10,934	19,302	29,672	31,512	56,016	12,210	26,344
	Wholesale Subtotal	40,308	51,318	8,871	21,229	49,179	72,547	69,868	124,198	20,689	51,650
52	Building materials, hardware, garden supply, & mobile home dealers.	4,608	5,874	949	2,380	5,557	8,254	10,553	18,758	4,995	10,504

TABLE 8.—SUMMARY OF COSTS AND BENEFITS FOR INDUSTRY SECTORS AFFECTED BY THE PROPOSED RULE—Continued

SIC	Industry description	Low implementation costs	High implementation costs	Low payroll costs	High payroll costs	Low total costs	High total costs	Low benefits	High benefits	Low difference	High difference
53	General merchandise stores	5,222	6,352	2,961	7,041	8,183	13,393	14,966	26,604	6,783	13,210
54	Food stores	13,060	16,499	6,487	16,941	19,547	33,441	19,519	34,698	−28	1,257
55	Automotive dealers & gasoline service stations.	13,380	17,101	3,942	10,470	17,322	27,571	38,529	68,490	21,207	40,919
56	Apparel & accessory stores	7,926	10,182	959	1,905	8,885	12,087	5,547	9,860	−3,339	−2,227
57	Home furniture, furnishings, & equipment stores.	7,015	9,032	1,627	3,795	8,641	12,827	20,518	36,472	11,876	23,646
58	Eating & drinking places	33,346	42,414	9,310	26,857	42,656	69,271	38,054	67,646	−4,601	−1,626
59	Miscellaneous retail	22,326	28,755	6,152	14,028	28,478	42,783	31,195	55,452	2,717	12,669
	Retail Subtotal	106,884	136,210	32,387	83,417	139,271	219,627	178,881	317,979	39,611	98,353
60	Depository institutions	6,943	8,924	2,677	8,836	9,620	17,760	23,042	40,960	13,422	23,200
61	Nondepository credit institutions	2,727	3,580	1,795	4,701	4,522	8,281	13,449	23,907	8,927	15,625
62–67	Holding & other investment offices, except trusts, & Security & commodity brokers, dealers, exchanges, & services.	4,055	5,302	8,260	20,789	12,315	26,091	30,936	54,992	18,620	28,901
63–64	Insurance carriers, Insurance agents, brokers, & services.	9,454	12,342	6,016	11,003	15,470	23,345	26,681	47,428	11,211	24,083
65	Real estate	10,801	14,565	21,401	56,982	32,202	71,546	21,773	38,703	−10,429	−32,843
	Fin., Insure., & Real Est. Subtotal.	33,980	44,713	40,150	102,311	74,130	147,024	115,881	205,990	41,751	58,966
70	Hotels, rooming houses, camps, & other lodging places.	6,394	7,899	2,707	7,492	9,101	15,391	10,461	18,595	1,359	3,204
72	Personal services	12,705	16,505	25,351	67,270	38,055	83,775	8,112	14,419	−29,943	−69,355
73	Business services	37,518	46,860	16,606	39,540	54,124	86,401	109,491	194,631	55,367	108,230
75	Automotive repair, services, & parking.	11,698	15,230	19,375	51,798	31,073	67,028	9,480	16,851	−21,593	−50,177
76	Miscellaneous repair services	4,164	5,406	1,373	4,213	5,537	9,618	1,586	2,819	−3,951	−6,800
78	Motion pictures	3,470	4,419	4,283	19,485	7,753	23,904	10,446	18,570	2,693	−5,334
79	Amusement & recreation services.	7,987	10,088	5,622	16,716	13,609	26,804	10,573	18,795	−3,035	−8,009
80	Health services	48,132	60,026	37,155	103,356	85,287	163,382	114,546	203,617	29,259	40,235
81	Legal services	10,263	13,361	2,246	8,969	12,509	22,329	42,821	76,119	30,313	53,790
82	Educational services	1,878	2,412	14,052	40,243	15,930	42,655	155,178	275,844	139,248	233,189
83	Social services	12,637	16,039	9,438	21,396	22,075	37,435	12,498	22,216	−9,577	−15,219
84	Museums, art galleries, & botanical & zoological gardens.	455	574	294	858	749	1,432	1,009	1,794	260	362
86	Membership organizations	4,425	5,701	1,396	9,151	5,821	14,851	8,252	14,668	2,430	−183
87	Engineering, accounting, research, management, & related services.	20,847	26,721	7,828	23,332	28,675	50,053	71,813	127,656	43,138	77,602
89	Services, not elsewhere classified [4].	1,080	1,405	206	488	1,286	1,892	1,205	2,143	−81	251
	Services Subtotal	183,651	232,645	147,933	414,307	331,584	646,952	567,471	1,008,736	235,887	361,784
	Private Industry	521,396	660,266	327,832	871,621	849,228	1,531,887	1,061,273	1,886,519	212,045	354,632
	State & Local Government	14,033	19,695	7,012	23,911	21,045	43,606	48,495	86,205	27,450	42,599
	Total	535,429	679,961	334,844	895,532	870,273	1,575,493	1,109,768	1,972,724	239,495	397,231

Note: Unless otherwise noted, data are from USDOC (2001a). Na: Data not available. Nc: Not calculable.
[1] Number of employers are derived from the U.S. Department of Commerce, Bureau of Census, 1992 Enterprise Statistics.
[2] Employment is estimated when data suppression occurs.
[3] Sales data for industries 07, 08, 09, and 89 are from the D&B (2001a) database.
[4] Number of establishments, number of employees, and annual payroll are derived from the USDOC (1999) database. Sales data are derived from the D&B (2001a) database.
[5] Only includes Railroad Switching and Terminal Establishments (SIC 4013).
[6] All data for the U.S. Postal Service are from USPS (1997).
[7] Data do not include large certificated passenger carriers that report to the Office of Airline Statistics, U.S. Department of Transportation.

Sources: CONSAD Research Corporation and the U.S. Department of Labor; U.S. Department of Commerce, Bureau of the Census (USDOC, 2001a), 1997 Economic Census: Comparative Statistics, downloaded from http://www.census.gov/epcd/ec97sic/index.html#download; U.S. Department of Commerce, Bureau of the Census (USDOC (1999), 1997 County Business Patterns; Dun & Bradstreet (D&B, 2001a) National Profile of Businesses Database for Fiscal Year 2000; Dun & Bradstreet (D&B, 2001b), Industry Norms and Key Business Ratios for Fiscal Year 2000/2001; U.S. Department of the Treasury, Internal Revenue Service (IRS, 2000) Corporate Tax Returns for Active Corporations for 1997; and U.S. Postal Service (USPS, 1997), 1997 Annual Report.

Small Business Cost Estimates

The upper bound small business cost estimate for the proposed rule ranges from $502.4 million to $835.9 million. This includes one-time implementation costs ranging from $349.3 million to $451.7 million and recurring payroll costs ranging from $153.1 million to $384.2 million. The recurring payroll costs as a percentage of total payroll range from 0.02 percent to 0.04 percent, and from 0.07 percent to 0.16 percent of total pre-tax profits.

The lower bound small business benefit estimate for the proposed rule ranges from $629.8 million to $1,119.4 million. These estimates do not include significant, but difficult to quantify, benefits such as the reduced human resource and legal costs for classifying workers under the proposed rule, and improved management productivity from reduced investigations and litigation.

The largest recurring payroll costs are incurred by the Personal Services industry ($17.6 million to $46.6

million), Construction ($16.7 million to $39.4 million), Automotive Repair, Services, and Parking ($13.9 million to $37.1 million), Agricultural Services ($10.4 million to $26.4 million), and Real Estate ($9.9 million to $26.3 million). The 10 industries with the highest costs account for 57.4 percent to 67.0 percent of the total small business costs.

The largest recurring payroll costs as a percentage of payroll are incurred by the Educational Services industry (0.4 percent to 1.0 percent), Agricultural Services (0.2 percent to 0.6 percent), Personal Services (0.2 percent to 0.4 percent), Transportation by Air (0.1 percent to 0.3 percent), and Automotive Repair, Services, and Parking (0.1 percent to 0.2 percent).

The largest recurring payroll costs as a percentage of pre-tax profits are incurred by the General Merchandise Stores (4.5 percent to 10.6 percent), Educational Services (2.0 percent to 5.3 percent), Agricultural Services (1.1 percent to 2.8 percent), Personal Services (0.9 percent to 2.4 percent), and Eating and Drinking Places (0.8 percent to 2.2 percent).

State and Local Government Cost and Benefit Estimates

The upper bound cost estimate for State and local governments for the proposed rule ranges from $21.0 million to $43.6 million. This includes one-time implementation costs ranging from $14.0 million to $19.7 million and recurring payroll costs ranging from $7.0 million to $23.9 million. The cost estimates represents less than 0.005 percent of the $1.4 trillion in general revenues received by all state and local governmental entities nationwide, and 0.01 percent to 0.03 percent of the $150 billion in total payrolls for those entities.

The lower bound benefit estimate for State and local governments for the proposed rule ranges from $48.5 million to $86.2 million. These estimates do not include significant, but difficult to quantify, benefits such as the reduced human resource and legal costs for classifying workers under the proposed rule, and improved management productivity from reduced investigations and litigation.

The largest costs are incurred by California ($2.6 million to $5.3 million), New York ($2.3 million to $4.7 million), Texas ($1.3 million to $2.8 million), Illinois ($1.2 million to $2.5 million), and Florida ($1.1 million to $2.2 million).

The largest recurring payroll costs as a percentage of payroll are incurred by Arizona (0.2 percent to 0.4 percent), Wyoming (0.2 percent to 0.4 percent), Alabama (0.1 percent to 0.3 percent), Illinois (0.1 percent to 0.3 percent), and West Virginia (0.1 percent to 0.3 percent). As a percentage of total state and local government revenues, the recurring payroll costs do not exceed 0.01 percent in any state.

Economic Impact of Updating the Duties Tests

The economic impact of updating the duties tests includes two components. First, determining whether an employee satisfies the requirements of the updated duties tests will be less difficult than determining whether that employee satisfies the requirements of the current duties tests. As a result, employers will likely incur much lower costs associated with determining the exempt status of employees, including conducting expensive time-and-motion studies, and responding to litigation contesting their exemption decisions. The second component is the incremental payroll costs that employers would be required to pay to the employees who satisfy the updated duties test but do not satisfy the current duties test if the proposed salary level tests were adopted without simultaneously adopting the proposed duties tests.

The possible magnitude of the cost savings of the first component is indicated by the estimated numbers of employees with salaries between $425 per week and $1,250 per week who would have failed to satisfy the current duties tests but would pass the updated duties tests. Because very little evidence is available on the costs for this component, the only indicator that is available is the potential number of employees who might require time-and-motion studies or involve litigation. The PRIA indicates an additional 1.5 million to 2.7 million employees will be more readily identified as exempt from the overtime requirements of the FLSA because the updated duties tests will replace the current duties tests in determining their exemption. Although certification and adjudication costs would only have been incurred on behalf of some portion of those employees, the large number of employees who could bring litigation under the current regulations and their relatively high levels of compensation indicate that the impact of revising the duties tests is probably substantial.

The second component of the economic impact of the revised duties tests is the additional incremental payroll costs that employers would be required to pay if the revised salary level tests were adopted without updating duties tests. If the proposed rule had increased the standard salary level test and highly compensated salary levels to $425 per week and $1,250 per week, respectively, without replacing the current long duties tests with the updated duties test, employers would have incurred incremental payroll costs for all executive, administrative, and professional employees in that salary range who would satisfy the updated duties test but would not satisfy the current long duties tests. The PRIA estimates that the incremental payroll costs for those 1.5 million to 2.7 million employees will be between $1.839 billion and $3.370 billion, in addition to the $870.2 million to $1,575.5 million for the regulation as proposed.

Finally, revising the duties tests could result in some paid hourly workers becoming salaried employees. PRIA data indicate there are 644,000 paid hourly workers working overtime in occupations with exempt administrative and professional duties that could be converted to salaried employees. All of these workers have either an associate degree or 4 year college degree or more and their average income ranges from $50,100 to $54,700 per year. This is an upper bound estimate based on the number of professional and administrative workers in occupations with mixed exempt and nonexempt duties employing a high level of skill or training.

V. Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 *et seq.*, requires agencies to prepare regulatory flexibility analyses, and make them available for public comment, when proposing regulations that will have ''a significant economic impact on a substantial number of small entities.'' Accordingly, the following analysis assesses the impact of these regulations on small entities as defined by the applicable SBA size standards.

In accordance with E.O. 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' this proposed rule has been reviewed to assess its potential impact on small businesses, small governmental jurisdictions, and small organizations, as provided by the Regulatory Flexibility Act. The Chief Counsel for Advocacy of the Small Business Administration was notified of a draft of this rule upon submission of the rule to the Office of Management and Budget under E.O. 12866, Regulatory Planning and Review.

(1) Reasons Why Action by Agency Is Being Considered

Section 13(a)(1) of the Fair Labor Standards Act (FLSA), 29 U.S.C. 213(a)(1), directs the Secretary of Labor to define and delimit from time to time, by regulations subject to the Administrative Procedure Act, ''any employee employed in a *bona fide* executive, administrative, or professional capacity * * * or in the capacity of outside salesman * * *.'' Employees meeting the criteria specified in these regulations are completely exempt from minimum wage and overtime pay under the FLSA. The existing regulations contain requirements for payment ''on a salary basis,'' at not less than specified minimum amounts, and certain additional tests related to an employee's primary job duties and responsibilities. The duties tests were last modified in 1949 and have remained essentially unchanged since contributing to higher human resource and legal costs in the economy. The salary levels required for exemption were last updated in 1975 on an interim basis. In 1999, the U.S. General Accounting Office reviewed these regulations and recommended that the Secretary of Labor comprehensively review and update them, and make necessary changes to better meet the needs of both employers and employees in the modern work place. These regulations were also suggested as a candidate for reform in public comments submitted on OMB's 2001 and 2002 Reports to Congress on the Costs and Benefits of Regulations. The Department is proposing revisions to these regulations in response to the concerns that have been raised over the years to update, clarify and simplify them for the 21st century workplace.

(2) Objectives of and Legal Basis for Rule

This proposed rule is issued pursuant to the authority provided by section 13(a)(1) of the FLSA. Its objective is to provide clear and concise regulatory guidance, in plain language, that will assist employers and employees in determining whether an employee is exempt from the FLSA as a *bona fide* executive, administrative, professional, or outside sales employee.

(3) Number of Small Entities Covered by the Rule

The estimated number of small entities covered by this rule is presented in the Department's Preliminary Regulatory Impact Analysis (PRIA). A copy of the Department's complete PRIA may be obtained by contacting the Wage and Hour Division at the address and telephone number provided above. Data based on SBA's size standards for small business entities indicates that 5.2 million establishments that will be affected by the proposed rule are considered to be small businesses. These small businesses employ approximately 38.7 million workers with an annual payroll of $940.0 billion. Their total annual sales are estimated to be $5.7 trillion and their annual pre-tax profits are estimated to be $233.9 billion. Approximately 79.8 percent of all affected establishments are considered to be small businesses and they account for 38.8 percent of the employment, 33.7 percent of the payroll, 31.8 percent of the annual sales, and 30.4 percent of the annual pre-tax profits.

(4) Reporting, Recordkeeping and Other Compliance Requirements of the Rule

Although an employer claiming an exemption from the FLSA under 29 CFR part 541 must be prepared to establish affirmatively that all required conditions for the exemption are met, this proposed rule contains no reporting or recordkeeping requirements as a condition for the exemption. However, the recordkeeping requirements for employers claiming exemptions from the FLSA under 29 CFR part 541 for particular employees are contained in the general FLSA recordkeeping regulations, applicable to all employers covered by the FLSA (codified at 29 CFR part 516; *see* 29 CFR 516.0 and 516.3) and have been approved by the Office of Management and Budget Control Number 1215–0017. There are no other compliance requirements under the proposed rule.

(5) Relevant Federal Rules Duplicating, Overlapping or Conflicting With the Rule

No other Federal rules duplicate or conflict with the requirements contained in these rules. Federal employees subject to the jurisdiction of the U.S. Office of Personnel Management (OPM) are governed by separate regulations administered by OPM and not these regulations. Some state laws have exemption standards applied under state law that differ from the exemption standards provided by these Federal rules. The FLSA does not preempt any stricter exemption standards that may apply under state law. *See* 29 U.S.C. 218.

(6) Differing Compliance and Reporting Requirements for Small Entities

The FLSA generally requires employers to pay covered non-exempt employees at least the federal minimum wage of $5.15 an hour, and time-and-one-half overtime premium pay for hours worked over 40 per week. Under the terms of the statute, Congress excluded some smaller businesses (those with annual revenues less than $500,000) from the definition of covered ''enterprises'' (although individual workers who are engaged in interstate commerce or who produce goods for such commerce may be individually covered by the FLSA). This proposed rule clarifies and updates the criteria for the statutory exemption from the FLSA for executive, administrative, professional, and outside sales employees for all employers covered by the FLSA. Moreover, given the purpose of the FLSA, Congressional intent, and the statutory provisions regarding the coverage for smaller businesses, adopting different compliance requirements for small entities under this rule was not considered feasible.

(7) Clarification, Consolidation and Simplification of Compliance and Reporting Requirements for Small Entities

As previously noted, the purpose of this proposed rule is to clarify, consolidate, simplify, and update the existing criteria for compliance with the exemption from the FLSA for executive, administrative, professional, and outside sales employees, for all businesses including small businesses. The proposed rule contains no new reporting requirements.

(8) Use of Performance Rather Than Design Standards

The FLSA requires that employers comply with the minimum wage and overtime pay requirements and permits a number of ways in which employers can achieve these ''performance standards.''

The Department considered a number of alternatives to the proposed rule that would impact small entities. One alternative would be not to change the existing regulations. This alternative was rejected because the Department has determined that the existing salary tests, which have not been raised in over 27 years, no longer provide any help in distinguishing between *bona fide* executive, administrative, and professional employees and those who should not be considered for exemption, and that the duties tests, which were last modified in 1949, are too complicated, confusing, and outdated for the modern workplace.

Two other alternatives would be to raise the salary levels and not update the duties tests or conversely to update

the duties tests without raising the salary levels. However, the Department has concluded that raising the salary levels is necessary to reestablish a clear relevant bright-line test between exempt and nonexempt workers for both employers and employees. Moreover, increasing the salary levels without updating the duties tests would increase the cost of the proposed rule by $1.839 billion to $3.370 billion per year—much of which would be incurred by small business. The duties tests were last revised in 1949 and have remained essentially unchanged since that time. The salary levels were last updated in 1975. The Department has determined that updating both the salary level and duties tests are necessary to better meet the needs of both employees and employers in the modern workplace and to anticipate future workplace trends.

Another alternative could be to adjust the salary levels for the proposed standard test for inflation. However, the Department has never relied solely on inflation adjustments to determine the appropriate salary levels, and has decided to continue its long-standing regulatory practice to reject such mechanical adjustments for inflation. In addition, the Department has determined that this alternative would be far too burdensome on small businesses. The PRIA indicates that adjusting the salary levels for inflation would more than double the recurring payroll costs of the proposed rule from a range of $335 million to $896 million per year to $747 million to $1,966 million per year.

Another alternative would be to adjust the salary levels for the proposed standard test and highly compensated test to levels consistent with the 1958 Department of Labor report—no more than 10 percent of those [workers] in the lowest-range—instead of the 20 percent range in the proposed rule. However, the Department has concluded that this would exclude overtime protections for a significant number of workers without having much of an impact on the cost of the proposed rule. The PRIA indicates that adjusting the salary levels consistent with the 1958 report could exempt 319,000 to 360,000 employees from overtime and reduce the cost of the proposed rule to $265 million to $719 million per year. The Department invites comments on the appropriate salary levels for the proposed standard test and highly compensated test.

(9) Exemption from Coverage of the Rule for Small Entities

As discussed above in section (6) of this analysis, under the terms of the statute, Congress excluded smaller businesses with annual revenues less than $500,000 from the definition of covered enterprises under the FLSA. Given the purpose of the FLSA, Congressional intent, and the statutory provisions regarding the coverage for smaller businesses, adopting different compliance requirements for small entities under this rule was not considered feasible.

VI. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501, requires agencies to prepare a written statement that identifies the: (1) Authorizing legislation; (2) cost-benefit analysis; (3) macro-economic effects; (4) summary of state, local, and tribal government input; and (5) identification of reasonable alternatives and selection, or explanation of non-selection, of the least costly, most cost-effective or least burdensome alternative; for proposed rules that include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

(1) Authorizing Legislation

This rule is issued pursuant to section 13(a)(1) of the Fair Labor Standards Act, 29 U.S.C. 213(a)(1). The section exempts from the FLSA's minimum wage and overtime pay requirements ''any employee employed in a *bona fide* executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of the Administrative Procedure Act * * *).'' The requirements of the exemption provided by this section of the Act are contained in this rule, 29 CFR part 541.

Section 3(e) of the Fair Labor Standards Act, 29 U.S.C. 203(e) defines employee to include most individuals employed by a state, political subdivision of a state, or interstate governmental agency. Section 3(x) of the Fair Labor Standards Act, 29 U.S.C. 203(x), also defines public agencies to include the government of a state or political subdivision thereof, or any interstate governmental agency.

(2) Cost-Benefit Analysis

Over 87,400 State and local governmental entities will be affected by the proposed rule (3,043 county governments, 19,372 municipal governments, 16,629 township governments, 34,683 special district governments, and 13,726 school district governments). Nationwide, these entities receive more than $1.4 trillion in general revenues, including revenues from taxes, some categories of fees and charges, and intergovernmental transfers. Their direct expenditures exceed $1.6 trillion in the aggregate. State and local governments employ more than 4 million workers and their payrolls exceed $12.6 billion per month.

The Department's Preliminary Regulatory Impact Analysis (PRIA) includes estimates of the implementation costs, incremental payroll costs, and benefits of the proposed rule for all state and local government sectors in the aggregate in each state. The results indicate that the total first year costs of the proposed rule on state and local government entities range from $21.0 to $43.6 million. This includes $14.0 to $19.7 million in first year (nonrecurring) implementation costs and $7.0 to $23.9 million in recurring incremental payroll costs. The first year costs represent less than three one-thousandths percent (0.003 percent) of the $1.434 trillion in general revenues received by all state and local government entities nationwide, and three one-hundredths percent (0.03 percent) of the $150.8 billion in total payrolls for those entities. The recurring incremental payroll costs are about one-half these very small amounts.

The Department's PRIA estimates that the benefits of the proposed rule for all state and local government sectors range from $48.5 to $86.2 million. These estimates exclude difficult to quantify benefits such as lower human resource costs and additional lower legal and settlement costs stemming from unintentionally misclassifying workers. The PRIA results indicate that the benefits of the proposed rule will exceed the costs for state and local governments in every year. However, State and local governments, as employers covered by the monetary requirements of the FLSA, will need to raise any such additional revenues required, however minimal, to meet their future compliance obligations if the proposed rule is adopted. The FLSA does not provide for Federal financial assistance or other Federal resources to meet the requirements of its intergovernmental mandates. The Federal mandate imposed by the rule is not expected to have measurable effects on health, safety, or the natural environment.

(3) Macro-Economic Effects

Agencies are expected to estimate the effect of a regulation on the national economy, such as the effect on productivity, economic growth, full employment, creation of productive jobs, and international competitiveness of United States goods and services, if accurate estimates are reasonably feasible and the effect is relevant and material. 5 U.S.C. 1532(a)(4). However, OMB guidance on this requirement notes that such macro-economic effects tend to be measurable in nationwide econometric models only if the economic impact of the regulation reaches 0.25 percent to 0.5 percent of Gross Domestic Product, or in the range of $1.5 billion to $3.0 billion. A regulation with smaller aggregate effect is not likely to have a measurable impact in macro-economic terms unless it is highly focused on a particular geographic region or economic sector, which is not the case with this proposed rule.

The Department's PRIA estimates that the total aggregate economic impact of this proposed rule ranges from $870.3 million to $1,575.5 million. However, as noted in the previous section summarizing the Department's PRIA, these are upper bound estimates and the actual costs and impacts expected to be incurred by employers, including state and local governments, if the proposed rule were adopted, are likely to be lower. Therefore, given OMB's guidance, the Department has determined that a full macro-economic analysis is not likely to show any measurable impact on the economy.

(4) Summary of State, Local, and Tribal Government Input

Congress amended the FLSA in 1985 to readjust how the Act would apply to the public sector. The 1985 amendments allowed compensatory time off in lieu of cash overtime pay, partial overtime exemptions for police and fire departments, the use of unpaid volunteers in certain circumstances, and a temporary phase-in period for meeting FLSA compliance obligations. However, Congress enacted no special provisions for public agencies related to the section 13(a)(1) exemptions or the 541 regulations. Consequently, the same rules for distinguishing 541-exempt employees from nonexempt employees that apply in the private sector were initially applied to the public sector following the 1985 amendments.

Since 1985, State and local governments have confronted FLSA compliance issues and the 541 regulations have been among the foremost of their concerns, particularly in the administrative exemption category. Many State and local governments classified nearly all of their non-supervisory ''white collar'' workers as exempt administrative employees without regard to whether their primary duty relates directly to agency management policies or general business operations or meets the discretion and independent judgment test. In the late 1980s, several Governors and State and local government agencies urged the Department to exempt classifications such as social workers, detectives, probation officers, and others, to avoid disrupting the level of public services that would result from increasing costs or limiting the hours of service due to overtime requirements. In 1989, former Labor Secretary Elizabeth Dole, in a widely disseminated response to 13 Governors, confirmed the nature of the administrative exemption's duties test as applied to public sector employees but solicited specific input with accompanying rationale for what should be changed. Responses were limited but argued generally that government services are unique because of the impact on health, safety, welfare or liberty of citizens. This, they argued, should allow exemption of positions in law enforcement and criminal justice, human services, health care and rehabilitation services, and the unemployment compensation systems, regardless of whether any particular employee's job duties include important decision-making on how the agency is operated or managed internally. They also urged the Department to redefine the professional exemption to recognize a broader contemporary use of that term in government employment.

In the midst of a growing wave of private lawsuits filed by public employees against their employers challenging their exempt status, a series of court decisions were rendered that sharply limited public employers' ability to successfully assert exemption under the ''salary basis'' rule. This led the Department to alter the ''salary basis'' rules to provide specific relief to public employers in a final rule issued in August 1992 (57 FR 37666; Aug. 19, 1992). Under this special rule, the fact that a public sector pay and leave system includes partial-day deductions from pay for absences not covered by accrued paid leave becomes irrelevant to determining any public sector employee's eligibility for exemption.

Public sector employers have been less vocal over FLSA issues since the Department's 1992 rulemaking allowing partial-day (or hourly) deductions from pay for employee absences not covered by accrued leave and other special ''salary basis'' rules for budget-driven furloughs (29 CFR 541.5d). The U.S. Supreme Court's 1997 decision in *Auer* v. *Robbins,* 519 U.S. 452 (1997), a public sector case involving the City of St. Louis Police Department and disciplinary deductions from pay, may also have relieved many concerns of public agencies over pay docking for discipline.

Although public agency organizations were invited to the Department's stakeholder meetings to address concerns over the 541 regulations, they mostly did not respond to the invitations. The International Personnel Management Association, accompanied by the National Public Employers Labor Relations Association and the U.S. Conference of Mayors, suggested that progressive discipline systems are common in the public sector (some collectively bargained) and the ''salary basis'' rule for exempt workers, which prohibits disciplinary deductions except for major safety rules, threatens such systems. Representatives of the Interstate Labor Standards Association (ILSA) submitted written views suggesting that the salary threshold be indexed to the current minimum wage or some multiple thereof (*e.g.,* 3 times the minimum wage for a 40-hour workweek or $618 per week). One additional idea was to relate the salary levels to those of the supervised employees.

The proposed rule would revise and simplify the exemptions' duties tests, but would continue to apply the same basic duties tests in both the public and private sectors. The public sector is governed by a different set of pay-docking rules and additional proposed revisions in this rule would broaden permissible disciplinary deductions to include sanctions for infractions such as sexual harassment and work place violence. However, a broader or separate duties test rule applicable solely to the public sector does not seem warranted at this time, as the case has not been made for such separate treatment. The Department is interested in receiving specific public comments on any issues of concern to public employees and public employers, and will carefully examine any such public comments submitted on this proposal during the rulemaking process.

(5) Least Burdensome Option or Explanation Required

The Department's consideration of various options is described in the preceding section in the preamble on the Regulatory Flexibility Act and Executive Order 13272. The Department

believes that it has chosen the least burdensome option that updates, clarifies, and simplifies the rule. One alternative option would have set the exemptions' salary level at a rate lower than the proposed $425 per week, which might impose lower direct payroll costs on employers but may not necessarily be the most cost-effective or least burdensome alternative for employers. A lower salary level could result in a less effective ''bright-line'' test that separates exempt workers from those nonexempt workers whom Congress intended to cover by the Act. Greater ambiguity regarding who is exempt and nonexempt increases the potential legal liability from unintentionally misclassifying workers, and thus the ultimate cost of the regulation.

VII. Effects on Families

This rule has been assessed under section 654 of the Treasury and General Government Appropriations Act, 1999, for its effect on family well-being and the undersigned hereby certifies that the rule will not adversely affect the well-being of families.

VIII. Executive Order 13045, Protection of Children

In accordance with Executive Order 13045, the Department has evaluated this rule and determined that it has no environmental health risk or safety risk that may disproportionately affect children.

IX. Executive Order 13132, Federalism

This rule will not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under the terms of section 6 of E.O. 13132, it has been determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

This rule is issued pursuant to section 13(a)(1) of the Fair Labor Standards Act, 29 U.S.C. 213(a)(1). The section exempts from the FLSA's minimum wage and overtime pay requirements ''any employee employed in a *bona fide* executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of the Administrative Procedure Act * * *).'' The requirements of the exemption provided by this section of the Act are contained in this rule, 29 CFR part 541.

Section 3(e) of the Fair Labor Standards Act, 29 U.S.C. 203(e), defines employee to include most individuals employed by a state, political subdivision of a state, or interstate governmental agency. Section 3(x) of the Fair Labor Standards Act, 29 U.S.C. 203(x), also defines public agencies to include the government of a state or political subdivision thereof, or any interstate governmental agency.

The Department's Preliminary Regulatory Impact Analysis (PRIA) estimates the implementation costs, incremental payroll costs, and benefits of the proposed rule for all state and local government sectors in the aggregate in each state. The results indicate that the total first year costs of the proposed rule on state and local government entities range from $24.1 to $43.6 million. This includes $14.0 to $19.7 million in first year (nonrecurring) implementation costs and $10.1 to $23.9 million in recurring incremental payroll costs. The first year costs represent less than three one-thousandths percent (0.003 percent) of the $1.434 trillion in general revenues received by all state and local government entities nationwide, and three one-hundredths percent (0.03 percent) of the $150.8 billion in total payrolls for those entities. The recurring incremental payroll costs are about one-half these very small amounts.

The Department's PRIA also estimates that the benefits of the proposed rule for all state and local government sectors range from $48.5 to $86.2 million. These estimates exclude difficult to quantify benefits such as lower human resource costs and additional lower legal and settlement costs stemming from unintentionally misclassifying workers. The PRIA results indicate that the benefits of the proposed rule will exceed the costs for state and local governments in every year. The Federal mandate imposed by the rule is not expected to have substantial direct effects on the States and will not affect the current relationship between the national government and the states or the distribution of power and responsibilities among the various levels of government.

X. Executive Order 13175, Indian Tribal Governments

This rule was reviewed under the terms of E.O. 13175 and determined not to have ''tribal implications.'' The rule does not have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' As a result, no tribal summary impact statement has been prepared.

XI. Executive Order 12630, Constitutionally Protected Property Rights

This rule is not subject to E.O. 12630 because it does not involve implementation of a policy ''that has takings implications'' or that could impose limitations on private property use.

XII. Executive Order 12988, Civil Justice Reform Analysis

This rule was drafted and reviewed in accordance with E.O. 12988 and will not unduly burden the federal court system. The rule was: (1) Reviewed to eliminate drafting errors and ambiguities; (2) written to minimize litigation; and (3) written to provide a clear legal standard for affected conduct, and to promote burden reduction.

XIII. Executive Order 13211, Energy Supply

This rule is not subject to E.O. 13211. It will not have a significant adverse effect on the supply, distribution, or use of energy.

XIV. Environmental Impact Assessment

The Department has reviewed this rule in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 U.S.C. 1500), and the Department's NEPA procedures (29 CFR part 11). The rule will not have a significant impact on the quality of the human environment, and, thus, the Department has not conducted an environmental assessment or an environmental impact statement.

List of Subjects in 29 CFR Part 541

Labor, Minimum wages, Overtime pay, Salaries, Teachers, Wages.

Signed in Washington, DC, this 25th day of March, 2003.

Tammy D. McCutchen,

Administrator, Wage and Hour Division.

For the reasons set forth above, 29 CFR part 541 is proposed to be amended as set forth below.

PART 541—DEFINING AND DELIMITING THE EXEMPTIONS FOR EXECUTIVE, ADMINISTRATIVE, PROFESSIONAL, COMPUTER AND OUTSIDE SALES EMPLOYEES

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Authority: 29 U.S.C. 213; Pub. L. 101–583, 104 Stat. 2871; Reorganization Plan No. 6 of 1950 (3 CFR 1945–53 Comp. p. 1004); Secretary's Order No. 4–2001 (66 FR 29656).

Subpart A—General Regulations

§ 541.0 Introductory statement.

(a) Section 13(a)(1) of the Fair Labor Standards Act, as amended, provides an exemption from the Act's minimum wage and overtime requirements for any employee employed in a *bona fide* executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of an outside sales employee, as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of the Administrative Procedure Act. Section 13(a)(17) of the Act provides an exemption from the minimum wage and overtime requirements for computer systems analysts, computer programmers, software engineers, and other similarly skilled computer employees.

(b) The requirements for these exemptions are contained in this part as follows: executive employees, subpart B; administrative employees, subpart C; professional employees, subpart D; computer employees, subpart E; outside sales employees, subpart F. Subpart G contains regulations regarding salary requirements applicable to most of the exemptions, including salary levels and the salary basis test. Subpart G also contains a provision for exempting certain highly compensated employees. Subpart H contains definitions and other miscellaneous provisions applicable to all or several of the exemptions.

(c) Effective July 1, 1972, the Fair Labor Standards Act was amended to include within the protection of the equal pay provisions those employees exempt from the minimum wage and overtime pay provisions as *bona fide* executive, administrative, and professional employees (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of an outside sales employee under section 13(a)(1) of the Act. The equal pay provisions in section 6(d) of the Fair Labor Standards Act are administered and enforced by the United States Equal Employment Opportunity Commission.

§ 541.1 Terms defined.

Act means the Fair Labor Standards Act of 1938, as amended.

Administrator means the Administrator of the Wage and Hour Division, United States Department of Labor. The Secretary of Labor has delegated to the Administrator the functions vested in the Secretary under sections 13(a)(1) and 13(a)(17) of the Fair Labor Standards Act.

§ 541.2 Job titles insufficient.

A job title alone is insufficient to establish the exempt status of an employee. The exempt or nonexempt status of any particular employee must be determined on the basis of whether the employee's salary and duties meet the requirements of the regulations in this part.

Subpart B—Executive Employees

§ 541.100 General rule for executive employees.

(a) The term ''employee employed in a *bona fide* executive capacity'' in section 13(a)(1) of the Act shall mean any employee:

(1) Compensated on a salary basis at a rate of not less than $425 per week (or $360 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities;

(2) With a primary duty of the management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof;

(3) Who customarily and regularly directs the work of two or more other employees; and

(4) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees will be given particular weight.

(b) The phrase ''salary basis'' is defined at § 541.602; ''board, lodging or other facilities'' is defined at § 541.606; ''primary duty'' is defined at § 541.700; and ''customarily and regularly'' is defined at § 541.701.

§ 541.101 Business owner.

The term ''employee employed in a *bona fide* executive capacity'' in section 13(a)(1) of the Act also includes any employee who owns at least a 20-percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization.

The requirements of subpart G (salary requirements) of this part do not apply to the business owners described in this section.

§ 541.102 Sole charge executive.

(a) The term ''employee employed in a *bona fide* executive capacity'' in section 13(a)(1) of the Act also includes any employee compensated on a salary basis at a rate of not less than $425 per week (or $360 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities, who is in sole charge of an independent establishment or a physically separated branch establishment.

(b) The term ''sole charge'' means that the employee ordinarily must be in charge of the company activities at the location where the employee is employed. Thus, to qualify as a ''sole charge'' executive, the employee must have authority to make decisions regarding the day-to-day operations of the establishment and to direct the work of any other employees at the establishment or branch. Only one person in any establishment can qualify as a sole charge executive, and then only if that person is the top person in charge at that location. The ''sole-charge'' status of an employee will not be considered lost because of an occasional visit to the establishment or branch office of a superior.

(c) The phrase ''independent establishment or a physically separated branch establishment'' means an establishment that has a fixed location and is geographically separated from other company property. The management of operations within one of several buildings located on single or adjoining tracts of company property does not qualify for the exemption under this section. In the case of a branch, there must be a true and complete physical separation from the main office.

(d) A leased department may qualify as an independent establishment when the lessee operates under a separate trade name, with its own separate employees and records, and in other respects conducts the lessee's business independently of the lessor's. In such a case the leased department would enjoy the same status as a physically separated branch establishment. A leased department cannot be considered an independent establishment when the lessor has authority over such matters as hiring and firing of employees, other personnel policies, advertising, purchasing, pricing, credit operations, insurance and taxes.

§ 541.103 Management of the enterprise.

Generally, ''management of the enterprise'' includes activities such as interviewing, selecting, and training of employees; setting and adjusting their rates of pay and hours of work; directing the work of employees; maintaining production or sales records for use in supervision or control; appraising employees' productivity and efficiency; handling employee complaints and grievances; disciplining employees; planning the work; determining the techniques to be used; apportioning the work among the employees; determining the type of materials, supplies, machinery or tools to be used or merchandise to be bought, stocked and sold; controlling the flow and distribution of materials or merchandise and supplies; and providing for the safety of the employees or the property.

§ 541.104 Department or subdivision.

(a) The phrase ''a customarily recognized department or subdivision'' is intended to distinguish between a mere collection of employees assigned from time to time to a specific job or series of jobs and a unit with permanent status and function. A customarily recognized department or subdivision must have a permanent status and a continuing function. For example, a large employer's human resources department might have subdivisions for labor relations, pensions and other benefits, equal employment opportunity, and personnel management, each of which has a permanent status and function.

(b) When an enterprise has more than one establishment, the employee in charge of each establishment may be considered in charge of a recognized subdivision of the enterprise. The employee also may qualify for the sole charge exemption, if all of the requirements of § 541.102 are satisfied.

(c) A recognized department or subdivision need not be physically within the employer's establishment and may move from place to place. The mere fact that the employee works in more than one location does not invalidate the exemption if other factors show that the employee is actually in charge of a recognized unit with a continuing function in the organization.

(d) Continuity of the same subordinate personnel is not essential to the existence of a recognized unit with a continuing function. An otherwise exempt employee will not lose the exemption merely because the employee draws and supervises workers from a pool or supervises a team of workers drawn from other recognized units, if other factors are present that indicate that the employee is in charge of a recognized unit with a continuing function.

§ 541.105 Two or more other employees.

(a) To qualify as an exempt executive under § 541.100, the employee must customarily and regularly direct the work of two or more other employees. The phrase ''two or more other employees'' means two full-time employees or their equivalent. One full-time and two half-time employees, for example, are equivalent to two full-time employees. Four half-time employees are also equivalent.

(b) The supervision can be distributed among two, three or more employees, but each such employee must customarily and regularly direct the work of two or more other full-time employees or the equivalent. Thus, for example, a department with five full-time non-exempt workers may have up to two exempt supervisors if each such supervisor customarily and regularly directs the work of two of those workers.

(c) An employee who merely assists the manager of a particular department and supervises two or more employees only in the actual manager's absence does not meet this requirement.

(d) Hours worked by an employee cannot be credited more than once for different executives. Thus, a shared responsibility for the supervision of the same two employees in the same department does not satisfy this requirement. However, a full-time employee who works four hours for one supervisor and four hours for a different supervisor, for example, can be credited as a half-time employee for both supervisors.

§ 541.106 Working supervisors.

Employees, sometimes called ''working foremen'' or ''working supervisors,'' who have some supervisory functions, such as directing the work of other employees, but also perform work unrelated or only remotely related to the supervisory activities are not exempt executives if, instead of having management as their primary duty as required in § 541.100, their primary duty consists of either the same kind of work as that performed by their subordinates; work that, although not performed by their own subordinates, consists of ordinary production or sales work; or routine, recurrent or repetitive tasks.

§ 541.107 Supervisors in retail establishments.

Supervisors in retail establishments often perform work such as serving

customers, cooking food, stocking shelves, cleaning the establishment or other non-exempt work. Performance of such non-exempt work by a supervisor in a retail establishment does not disqualify the employee from the exemption if the requirements of § 541.100 are otherwise met. Thus, an assistant manager whose primary duty includes such activities as scheduling employees, assigning work, overseeing product quality, ordering merchandise, managing inventory, handling customer complaints, authorizing payment of bills or performing other management functions may be an exempt executive even though the assistant manager spends the majority of the time on non-exempt work.

Subpart C—Administrative Employees

§ 541.200 General rule for administrative employees.

(a) The term ''employee employed in a *bona fide* administrative capacity'' in section 13(a)(1) of the Act shall mean any employee:

(1) Compensated on a salary or fee basis at a rate of not less than $425 per week (or $360 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities;

(2) With a primary duty of the performance of office or non-manual work related to the management or general business operations of the employer or the employer's customers; and

(3) Who holds a position of responsibility with the employer.

(b) The term ''salary basis'' is defined at § 541.602; ''fee basis'' is defined at § 541.605; ''board, lodging or other facilities'' is defined at § 541.606; and ''primary duty'' is defined at § 541.700.

§ 541.201 Related to management or general business operations.

(a) To qualify for the administrative exemption, an employee must perform work related to the management or general business operations of the employer or the employer's customers. The phrase ''related to management or general business operations'' refers to the type of work performed by the employee. To meet this requirement, an employee must perform work related to assisting with the running or servicing of the business, as distinguished, for example, from working on a manufacturing production line or selling a product.

(b) Work related to management or general business operations includes, for example, work in areas such as tax, finance, accounting, auditing, insurance, quality control, purchasing, procurement, advertising, marketing, research, safety and health, personnel management, human resources, employee benefits, labor relations, public relations, government relations and similar activities. Some of these activities may be performed by employees who also would qualify for another exemption. For example, a tax attorney and an accountant likely are performing work that qualifies for the professional exemption.

(c) An employee may qualify for the administrative exemption if the employee performs work related to the management or general business operations of the employer's customers. Thus, for example, employees acting as advisers and consultants to their employer's clients or customers (as tax experts or financial consultants, for example) may be exempt.

§ 541.202 Position of responsibility.

To qualify for the administrative exemption, an employee must hold a position of responsibility with the employer. The phrase ''position of responsibility'' refers to the importance to the employer of the work performed or the high level of competence required by the work performed. To meet this requirement, an employee must either customarily and regularly perform work of substantial importance or perform work requiring a high level of skill or training. The phrase ''customarily and regularly'' is defined at § 541.710.

§ 541.203 Work of substantial importance.

(a) The phrase ''work of substantial importance'' means work that, by its nature or consequence, affects the employer's general business operations or finances to a significant degree.

(b) Work of substantial importance includes activities such as formulating, interpreting or implementing management policies; providing consultation or expert advice to management; making or recommending decisions that have a significant impact on general business operations or finances; analyzing and recommending changes to operating practices; planning long or short-term business objectives; analyzing data, drawing conclusions and recommending changes; handling complaints, arbitrating disputes or resolving grievances; representing the company during important contract negotiations; and work of similar impact on general business operations or finances. Work of substantial importance thus is not limited to employees who participate in the formulation of management policies or in the operation of the business as a whole. It includes the work of employees who carry out major assignments in conducting the operations of the business, or whose work affects general business operations to a significant degree, even though their assignments are tasks related to the operation of a particular segment of the business.

(1) For example, an employee who is a buyer of a particular type of equipment in an industrial plant or who is an assistant buyer for a retail or service establishment may have a significant impact on the business, even though the work may be limited to purchasing for a particular department. Similarly, although comparison shopping by an employee who merely reports findings on a competitor's prices is not work of substantial importance, the buyer who evaluates such reports to set the employer's prices does perform work of substantial importance.

(2) Insurance claims adjusters also generally perform work of substantial importance, whether they work for an insurance company or other type of company, if their duties include activities such as interviewing insureds, witnesses and physicians; inspecting property damage; reviewing factual information to prepare damage estimates; evaluating and making recommendations regarding coverage of claims; determining liability and total value of a claim; negotiating settlements; and making recommendations regarding litigation.

(3) An employee who leads a team of other employees assigned to complete a major project for the employer (such as purchasing, selling or closing all or part of the business, negotiating a real estate transaction or a collective bargaining agreement, or designing and implementing productivity improvements) performs work of substantial importance, even if the employee does not have direct supervisory responsibility over the other employees on the team.

(4) Other employees that perform work of substantial importance, even if their decisions or recommendations are reviewed for possible modification or rejection at a higher level, include: a human resources manager who formulates employment policies; a management consultant who studies the operations of a business and proposes change in organization; a purchasing agent who is required to consult with top management officials when making a purchase commitment for raw materials in excess of the contemplated plant needs; or an executive or administrative assistant to a proprietor or chief executive of a business if such

employee, without specific instructions or prescribed procedures, has been delegated authority to arrange meetings, handle callers and answer correspondence.

(c) Work of substantial importance does not include clerical or secretarial tasks, recording or tabulating data, or performing other mechanical, repetitive, recurrent or routine work. For example, an employee who simply tabulates data is not exempt, even if labeled as a ''statistician.'' An example of an employee who does not perform work of substantial importance is a personnel clerk engaged in ''screening'' of applicants (collecting data and rejecting applicants who do not meet basic qualifications), but who is not involved in making the decision to hire.

(d) An employer's volume of business may make it necessary to employ a number of employees to perform the same or similar work. The fact that many employees perform identical work or work of the same relative importance does not mean that the work of each such employee is not work of substantial importance.

(e) The work of an employee does not meet this requirement merely because the employer will experience financial losses if the employee fails to perform the job properly. For example, a messenger who is entrusted with carrying large sums of money does not perform work of substantial importance even though serious consequences may flow from the employee's neglect. An employee who operates very expensive equipment is not performing work of substantial importance merely because improper performance of the employee's duties may cause serious financial loss to the employer.

§ 541.204 High level of skill or training.

(a) The phrase ''work requiring a high level of skill or training'' means administrative work requiring specialized knowledge or abilities, or advanced training. The specialized knowledge or abilities need not be acquired through any particular course of academic training or study. Also, the high level of training required may involve advanced academic instruction or advanced on-the-job training, or a combination of both. Administrative work that satisfies the ''high level of skill or training'' standard includes advisory work performed for the management of the company (or for the management of the company's customers), as is typically performed by financial advisors, tax advisors, insurance experts, credit managers, employee benefits experts, human resource consultants, labor relations consultants, marketing consultants, safety directors, account executives of advertising agencies and stock brokers. Employees with a high level of skill or training also may perform special assignments, including assignments performed away from their employer's place of business if the employee serves as a field representative for the employer.

(b) Work requiring a high level of skill or training may include work by employees who use a reference manual. The use of such a manual can require a high level of skill and training if the manual contains highly technical, scientific, legal, financial or other similarly complex information that can be interpreted properly only by those with advanced training or specialized knowledge or skills. Such manuals are used to provide guidance in addressing very difficult or novel circumstances. Thus, if an employee performs administrative work that satisfies the ''high level of skill or training'' standard, using this type of reference manual would not affect the employee's exempt status.

(c) Work requiring a high level of skill or training does not include work requiring the employee simply to look up information (from a handbook, for example) to determine the correct response to an inquiry or set of circumstances. Nor does it include clerical or secretarial work, recording or tabulating data, or other mechanical, repetitive, recurrent or routine work. Employees such as inspectors, examiners and graders who use established techniques, procedures or standards to accept or reject a product do not perform work requiring a high level of skill or training, even though such employees may have some leeway in the performance of their work.

§ 541.205 Educational establishments.

(a) The term ''employee employed in a *bona fide* administrative capacity'' in section 13(a)(1) of the Act also includes employees:

(1) Compensated for services on a salary or fee basis at a rate of not less than $425 per week (or $360 per week, if employed in American Samoa by employers other than the Federal Government) exclusive of board, lodging or other facilities, or on a salary basis which is at least equal to the entrance salary for teachers in the educational establishment by which employed; and

(2) With a primary duty of performing administrative functions directly related to academic instruction or training in an educational establishment or department or subdivision thereof.

(b) The term ''educational establishment'' means an elementary or secondary school system, an institution of higher education or other educational institution. Sections 3(v) and 3(w) of the Act define elementary and secondary schools as those day or residential schools that provide elementary or secondary education, as determined under State law. Under the laws of most States, such education includes the curricula in grades 1 through 12; under many it includes also the introductory programs in kindergarten. Such education in some States may also include nursery school programs in elementary education and junior college curricula in secondary education. The term ''educational establishment'' includes special schools for mentally or physically disabled or gifted children, regardless of any classification of such schools as elementary, secondary or higher. Also, for purposes of the exemption, no distinction is drawn between public and private schools, or between those operated for profit and those that are not for profit.

(c) The phrase ''performing administrative functions directly related to academic instruction or training'' means work related to the academic operations and functions in a school rather than to administration along the lines of general business operations. Such academic administrative functions include operations directly in the field of education. Jobs relating to areas outside the educational field are not within the definition of academic administration.

(1) Employees engaged in academic administrative functions include: the superintendent or other head of an elementary or secondary school system, and any assistants, responsible for administration of such matters as curriculum, quality and methods of instructing, measuring and testing the learning potential and achievement of students, establishing and maintaining academic and grading standards, and other aspects of the teaching program; the principal and any vice-principals responsible for the operation of an elementary or secondary school; department heads in institutions of higher education responsible for the administration of the mathematics department, the English department, the foreign language department, etc.; and other employees with similar responsibilities.

(2) Jobs relating to building management and maintenance, jobs relating to the health of the students, and academic staff such as social workers, psychologists, lunch room managers or dietitians do not perform

academic administrative functions. Although such work is not considered academic administration, such employees may qualify for exemption under § 541.200 or under other sections of this part provided the requirements for such exemptions are met.

Subpart D—Professional Employees

§ 541.300 General rule for professional employees.

(a) The term ''employee employed in a *bona fide* professional capacity'' in section 13(a)(1) of the Act shall mean any employee:

(1) Compensated on a salary or fee basis at a rate of not less than $425 per week (or $360 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging, or other facilities; and

(2) With a primary duty of performing office or non-manual work:

(i) Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction, but which also may be acquired by alternative means such as an equivalent combination of intellectual instruction and work experience; or

(ii) Requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

(b) The term ''salary basis'' is defined at § 541.602; ''fee basis'' is defined at § 541.605; ''board, lodging or other facilities'' is defined at § 541.606; and ''primary duty'' is defined at § 541.700.

§ 541.301 Learned professionals.

(a) Learned professionals must have a primary duty of performing office or non-manual work requiring advanced knowledge in a field of science or learning. The term ''advanced knowledge'' means knowledge that is customarily acquired through a prolonged course of specialized intellectual instruction, but which also may be acquired by alternative means such as an equivalent combination of intellectual instruction and work experience. The learned professions include the professions of law, medicine, theology, teaching, accounting, actuarial computation, engineering, architecture, various types of physical, chemical and biological sciences, pharmacy, and other similar occupations that have a recognized professional status based on the acquirement of advanced knowledge and performance of work that is predominantly intellectual in character as opposed to routine, mental, manual, mechanical or physical work.

(b) The phrase ''knowledge of an advanced type'' means knowledge that cannot be attained at the high school level.

(c) The phrase ''field of science or learning'' distinguishes the learned professions from the mechanical arts where in some instances the knowledge is of a fairly advanced type, but not in a field of science or learning.

(d) The phrase ''customarily acquired by a prolonged course of specialized intellectual instruction'' generally restricts the exemption to professions where specialized academic training is a standard prerequisite for entrance into the profession. The best prima facie evidence that an employee meets this requirement is possession of the appropriate academic degree. However, the word ''customarily'' means that the exemption is also available to employees in such professions who have substantially the same knowledge level as the degreed employees, but who attained such knowledge through a combination of work experience, training in the armed forces, attending a technical school, attending a community college or other intellectual instruction.

(e) The following professions have been found by the Administrator generally to meet the primary duty requirement for learned professionals in § 541.300(b)(1):

(1) *Registered or certified medical technologists.* Registered or certified medical technologists who have successfully completed three academic years of pre-professional study in an accredited college or university plus a fourth year of professional course work in a school of medical technology approved by the Council of Medical Education of the American Medical Association.

(2) *Registered nurses.* Nurses who are registered by the appropriate State examining board.

(3) *Dental hygienists.* Dental hygienists who have successfully completed four academic years of pre-professional and professional study in an accredited college or university approved by the Commission on Accreditation of Dental and Dental Auxiliary Educational Programs of the American Dental Association.

(4) *Physician assistants.* Physician assistants who have successfully completed three years of pre-professional study (or 2,000 hours of patient care experience in a military or civilian occupation such as laboratory technology, nursing, psychology, biology, or related activity) plus not less than one year of professional course work in a medical school or hospital.

(5) *Accountants.* Certified public accountants, except in unusual cases, meet the primary duty requirement for the learned professional exemption. In addition, many other accountants who are not certified public accountants but perform similar job duties may qualify as exempt learned professionals. However, accounting clerks and other employees who normally perform a great deal of routine work generally will not qualify as exempt professionals.

(6) *Chefs.* Chefs, such as executive chefs and sous chefs, who have attained a college degree in a culinary arts program, meet the primary duty requirement for the learned professional exemption.

(f) Professional occupations do not include those whose duties may be performed with the general knowledge acquired by an academic degree in any field or with knowledge acquired through an apprenticeship or from training in routine mental, manual or physical processes. Thus, for example, the professional exemption does not apply to occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, construction workers, teamsters and other employees who perform manual work that does not require an advanced academic degree.

(g) The areas in which professional exemptions may be available are expanding. As knowledge is developed, academic training is broadened and specialized degrees are offered in new and diverse fields, thus creating new specialists in particular fields of science or learning. When a specialized degree has become a standard requirement for a particular occupation, that occupation may have acquired the characteristics of a learned profession.

§ 541.302 Creative professionals.

(a) Creative professionals must have a primary duty of performing office or non-manual work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor as opposed to routine mental, manual, mechanical or physical work. The exemption does not apply to work which can be produced by a person with general manual ability and training.

(b) To qualify for exemption as a creative professional, the work performed must be ''in a recognized field of artistic or creative endeavor.'' This includes such fields as music, writing, acting and the graphic arts.

(c) The requirement of ''invention, imagination, originality or talent'' distinguishes the creative professions from work that primarily depends on

intelligence, diligence and accuracy. This requirement generally is met by actors, musicians, composers, conductors, and soloists; painters who at most are given the subject matter of their painting; cartoonists who are merely told the title or underlying concept of a cartoon and must rely on their own creative ability to express the concept; essayists, novelists, short-story writers and screen play writers who choose their own subjects and hand in a finished piece of work to their employers (the majority of such persons are, of course, not employees but self-employed); and persons holding the more responsible writing positions in advertising agencies. This requirement generally is not met by a person who is employed as a copyist, as an ''animator'' of motion-picture cartoons, or as a retoucher of photographs, since such work is not properly described as creative in character.

(d) Journalists may qualify as creative professionals if their work generally requires invention, imagination, originality or talent. Writers for newspapers, news magazines, television news programs, the Internet and other media, for example, generally perform work involving originality and talent. Radio announcers and television announcers also perform work that requires artistic or creative talent. Exempt work includes conducting interviews, reporting or analyzing public events, and acting as a narrator, announcer or commentator. Positions that primarily require the employee to collect and record routine facts or data without analysis, interpretation, synthesis, or creative or original writing would not qualify for the creative professional exemption.

§ 541.303 Teachers.

(a) The term ''employee employed in a *bona fide* professional capacity'' in section 13(a)(1) of the Act also means any employee with a primary duty of teaching, tutoring, instructing or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in an educational establishment by which the employee is employed. The term ''educational establishment'' is defined in § 541.205(b).

(b) Exempt teachers include, but are not limited to: regular academic teachers; teachers of kindergarten or nursery school pupils; teachers of gifted or disabled children; teachers of skilled and semiskilled trades and occupations; teachers engaged in automobile driving instruction; aircraft flight instructors; home economics teachers; and vocal or instrumental music instructors. Those faculty members who are engaged as teachers but also spend a considerable amount of their time in extracurricular activities such as coaching athletic teams or acting as moderators or advisors in such areas as drama, speech, debate or journalism are engaged in teaching. Such activities are a recognized part of the schools' responsibility in contributing to the educational development of the student.

(c) The possession of an elementary or secondary teacher's certificate provides a clear means of identifying the individuals contemplated as being within the scope of the exemption for teaching professionals. Teachers who possess a teaching certificate qualify for the exemption regardless of the terminology (*e.g.*, permanent, conditional, standard, provisional, temporary, emergency, or unlimited) used by the State to refer to different kinds of certificates. However, private schools and public schools are not uniform in requiring a certificate for employment as an elementary or secondary school teacher, and a teacher's certificate is not generally necessary for employment in institutions of higher education or other educational establishments. Therefore, a teacher who is not certified may be considered for exemption, provided that such individual is employed as a teacher by the employing school or school system.

(d) The requirements of § 541.300 and subpart G (salary requirements) of this part do not apply to the teaching professionals described in this section.

§ 541.304 Practice of law or medicine.

(a) The term ''employee employed in a *bona fide* professional capacity'' in section 13(a)(1) of the Act also shall mean:

(1) Any employee who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and is actually engaged in the practice thereof; and

(2) Any employee who is the holder of the requisite academic degree for the general practice of medicine and is engaged in an internship or resident program pursuant to the practice of the profession.

(b) In the case of medicine, the exemption applies to physicians and other practitioners licensed and practicing in the field of medical science and healing or any of the medical specialties practiced by physicians or practitioners. The term ''physicians'' includes medical doctors including general practitioners and specialists, osteopathic physicians (doctors of osteopathy), podiatrists, dentists (doctors of dental medicine), and optometrists (doctors of optometry or bachelors of science in optometry).

(c) Employees engaged in internship or resident programs, whether or not licensed to practice prior to commencement of the program, qualify as exempt professionals if they enter such internship or resident programs after the earning of the appropriate degree required for the general practice of their profession.

(d) The requirements of § 541.300 and subpart G (salary requirements) of this part do not apply to the licensed lawyers and medical professionals described in this section.

Subpart E—Computer Employees

§ 541.400 General rule for computer employees.

(a) Computer systems analysts, computer programmers, software engineers or other similarly skilled workers in the computer field are eligible for exemption as professionals under section 13(a)(1) of the Act and under section 13(a)(17) of the Act. Employees who qualify for this exemption are highly skilled in computer systems analysis, programming, software engineering or similar computer functions. Because job titles vary widely and change quickly in the computer industry, job titles are not determinative of the applicability of this exemption. To qualify for the computer occupations exemption, the employee must:

(1) Be compensated on a salary or fee basis at a rate of not less than $425 per week (or $360 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities, or on an hourly basis at a rate not less than $27.63 an hour; and

(2) Have a primary duty consisting of:

(i) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;

(ii) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;

(iii) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or

(iv) A combination of the aforementioned duties, the performance of which requires the same level of skills.

(b) The term ''salary basis'' is defined at § 541.602; ''fee basis'' is defined at § 541.605; ''board, lodging or other facilities'' is defined at § 541.606; and ''primary duty'' is defined at § 541.700.

§ 541.401 High level of skill and expertise.

The exemption for computer employees applies only to highly-skilled employees who have achieved a level of proficiency in the theoretical and practical application of highly-specialized knowledge in computer systems analysis, programming and software engineering. This exemption does not include trainees or employees in entry level positions learning to become proficient in such areas or to employees in computer occupations who have not attained a level of skill and expertise which allows them to work generally without close supervision. The level of expertise and skill required to qualify for this exemption is generally attained through combinations of education, specialized training and experience in the field. No particular academic degree is required for this exemption, nor are there any requirements for licensure or certification.

§ 541.402 Computer operation, manufacture and repair.

The exemption for employees in computer occupations does not include employees engaged in the operation of computers or in the manufacture, repair or maintenance of computer hardware and related equipment. Employees whose work is highly dependent upon, or facilitated by, the use of computers and computer software programs (*e.g.*, engineers, drafters and others skilled in computer-aided design software), but who are not in computer systems analysis and programming occupations, are also not exempt computer professionals.

§ 541.403 Executive and administrative computer employees.

Computer employees within the scope of this exemption, as well as those employees not within its scope, may also have executive and administrative duties which qualify the employees for exemption under subpart B or subpart C of this part. For example, systems analysts and computer programmers whose primary duties are to plan, schedule, and coordinate activities required to develop systems to solve complex business, scientific or engineering problems of the employer or the employer's customers are performing work of substantial importance related to management or general business operations and may qualify as exempt administrative employees under § 541.200. Similarly, a senior or lead computer programmer whose primary duty is to manage and direct the work of other programmers in a customarily recognized department or subdivision may qualify as an exempt executive employee under § 541.100.

Subpart F—Outside Sales Employees

§ 541.500 General rule for outside sales employees.

(a) The term ''employee employed in the capacity of outside salesman'' in section 13(a)(1) of the Act shall mean any employee:

(1) With a primary duty of:

(i) Making sales within the meaning of section 3(k) of the Act, or

(ii) Obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and

(2) Who is customarily and regularly engaged away from the employer's place or places of business in performing such primary duty.

(b) The term ''primary duty'' is defined at § 541.700. In determining the primary duty of an outside sales employee, work performed incidental to and in conjunction with the employee's own outside sales or solicitations, including incidental deliveries and collections, shall be regarded as exempt outside sales work. Other work that furthers the employee's sales efforts also shall be regarded as exempt work including, for example, writing sales reports, updating or revising the employee's sales or display catalog, planning itineraries and attending sales conferences. The requirements of subpart G (salary requirements) of this part do not apply to the outside sales employees described in this section.

§ 541.501 Making sales or obtaining orders.

(a) Section 541.500 requires that the employee be engaged in:

(1) Making sales within the meaning of section 3(k) of the Act, or

(2) Obtaining orders or contracts for services or for the use of facilities.

(b) Sales within the meaning of section 3(k) of the Act include the transfer of title to tangible property, and in certain cases, of tangible and valuable evidences of intangible property. Section 3(k) of the Act states that ''sale'' or ''sell'' includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.

(c) Exempt outside sales work includes not only the sales of commodities, but also ''obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer.'' Obtaining orders for ''the use of facilities'' includes the selling of time on radio or television, the solicitation of advertising for newspapers and other periodicals, and the solicitation of freight for railroads and other transportation agencies.

(d) The word ''services'' extends the outside sales exemption to employees who sell or take orders for a service, which may be performed for the customer by someone other than the person taking the order.

§ 541.502 Away from employer's place of business.

(a) An outside sales employee must be customarily and regularly engaged ''away from the employer's place or places of business.'' This requirement is based on the obvious connotation of the word ''outside'' in the statutory term ''outside salesman.'' The Administrator does not have authority to define this exemption for ''outside'' sales under section 13(a)(1) of the Act as including inside sales work. Section 13(a)(1) does not exempt inside sales and other inside work (except work performed incidental to and in conjunction with outside sales and solicitations). However, section 7(i) of the Act exempts commissioned inside sales employees of qualifying retail or service establishments if those employees meet the compensation requirements of section 7(i).

(b) The outside sales employee is an employee who makes sales at the customer's place of business or, if selling door-to-door, at the customer's home. Outside sales does not include sales made by mail, telephone or the Internet unless such contact is used merely as an adjunct to personal calls. Thus, any fixed site, whether home or office, used by a salesperson as a headquarters or for telephonic solicitation of sales is considered one of the employer's places of business, even though the employer is not in any formal sense the owner or tenant of the property. However, an outside sales employee does not lose the exemption by displaying samples in hotel sample rooms during trips from city to city; these sample rooms should not be considered as the employer's places of business.

§ 541.503 Promotion work.

(a) Promotion work is one type of activity often performed by persons who make sales, which may or may not be exempt outside sales work, depending upon the circumstances under which it is performed. Promotional work that is actually performed incidental to and in

conjunction with an employee's own outside sales or solicitations is exempt work. On the other hand, promotional work that is incidental to sales made, or to be made, by someone else is not exempt outside sales work.

(b) A manufacturer's representative, for example, may perform various types of promotional activities such as putting up displays and posters, removing damaged or spoiled stock from the merchant's shelves or rearranging the merchandise. Such an employee can be considered an exempt outside sales employee if the employee's primary duty is making sales or contracts. Promotion activities directed toward consummation of the employee's own sales are exempt. Promotional activities designed to stimulate sales that will be made by someone else are not exempt.

(c) Another example is a company representative who visits chain stores, arranges the merchandise on shelves, replenishes stock by replacing old with new merchandise, consults with the store manager as to the requirements of the store, fills out a requisition for the quantity wanted, but leaves the requisition with the store manager to be transmitted to the central warehouse of the chain store company which later ships the quantity requested. The arrangement of merchandise on the shelves or the replenishing of stock is not exempt work unless it is incidental to and in conjunction with the employee's own outside sales. Because the employee in this instance does not consummate the sale nor direct efforts toward the consummation of a sale, the work in this example is not exempt.

§ 541.504 Drivers who sell.

(a) Drivers who deliver products and also sell such products may qualify as exempt outside sales employees only if the employee has a primary duty of making sales. If the employee has a primary duty of making sales, all work performed incidental to and in conjunction with the employee's own sales efforts, including loading, driving or delivering products, is exempt work.

(b) Several factors should be considered in determining if a driver has a primary duty of making sales, including: a comparison of the driver's duties with those of other employees engaged as truck drivers and as salespersons; possession of a selling or solicitor's license when such license is required by law or ordinances; presence or absence of customary or contractual arrangements concerning amounts of products to be delivered; description of the employee's occupation in collective bargaining agreements; the employer's specifications as to qualifications for hiring; sales training; attendance at sales conferences; method of payment; and proportion of earnings directly attributable to sales.

(c) Drivers who may qualify as exempt outside sales employees include:

(1) A driver who provides the only sales contact between the employer and the customers visited, who calls on customers and takes orders for products, who delivers products from stock in the employee's vehicle or procures and delivers the product to the customer on a later trip, and who receives compensation commensurate with the volume of products sold.

(2) A driver who obtains or solicits orders for the employer's products from persons who have authority to commit the customer for purchases.

(3) A driver who calls on new prospects for customers along the employee's route and attempts to convince them of the desirability of accepting regular delivery of goods,

(4) A driver who calls on established customers along the route and carrying an assortment of the employer's products who persuades regular customers to accept delivery of increased amounts of goods or of new products, even though the initial sale or agreement for delivery was made by someone else.

(d) Drivers who generally would not qualify as exempt outside sales employees include:

(1) A route driver whose primary duty is to transport products sold by the employer through vending machines and to keep such machines stocked, in good operating condition, and in good locations does not have a primary duty of making sales.

(2) A driver who often calls on established customers day after day or week after week, delivering a quantity of the employer's products at each call when the sale was not significantly affected by solicitations of the customer by the delivering driver or the amount of the sale is determined by the volume of the customer's sales since the previous delivery.

(3) A driver primarily engaged in making deliveries to customers and performing activities intended to promote sales by customers (including placing point-of-sale and other advertising materials, price stamping commodities, arranging merchandise on shelves, in coolers or in cabinets, rotating stock according to date, and cleaning and otherwise servicing display cases), unless such work is in furtherance of the driver's own sales efforts.

Subpart G—Compensation Requirements

§ 541.600 Amount of salary required.

(a) To qualify as an exempt executive, administrative or professional employee under section 13(a)(1) of the Act, an employee must be compensated on a salary basis at a rate of not less than $425 per week (or $360 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities. Administrative and professional employees may also be paid on a fee basis, as defined in § 541.605.

(b) The $425 a week may be translated into equivalent amounts for periods longer than one week. The requirement will be met if the employee is compensated biweekly on a salary basis of $850, semimonthly on a salary basis of $920.84, or monthly on a salary basis of $1,841.67. However, the shortest period of payment that will meet this compensation requirement is one week.

(c) In the case of academic administrative employees, the compensation requirement also may be met by compensation on a salary basis at a rate at least equal to the entrance salary for teachers in the educational establishment by which the employee is employed, as provided in § 541.206(a)(1).

(d) In the case of computer employees, the compensation requirement also may be met by compensation on an hourly basis at a rate not less than $27.63 an hour, as provided in § 541.400(a).

(e) In the case of professional employees, the compensation requirements in this section shall not apply to employees engaged as teachers (§ 541.303); employees who hold a valid license or certificate permitting the practice of law or medicine or any of their branches and are actually engaged in the practice thereof (*see* § 541.304); or to employees who hold the requisite academic degree for the general practice of medicine and are engaged in an internship or resident program pursuant to the practice of the profession (*see* § 541.304). In the case of medical occupations, the exception from the salary or fee requirement does not apply to pharmacists, nurses, therapists, technologists, sanitarians, dietitians, social workers, psychologists, psychometrists, or other professions which service the medical profession.

§ 541.601 Highly compensated employees.

(a) An employee who performs office or non-manual work and is guaranteed a total annual compensation of at least

$65,000 ($55,000 if employed in American Samoa by employers other than the Federal Government) is deemed exempt under section 13(a)(1) of the Act if the employee performs any one or more of the exempt duties or responsibilities of an executive, administrative or professional employee identified in subparts B, C or D of this part.

(b) The phrase ''total annual compensation'' excludes board, lodging or other facilities as defined in § 541.606, but includes base salary, commissions, non-discretionary bonuses and other non-discretionary compensation.

(1) The base salary, commissions and non-discretionary compensation must be settled and paid out to the employee as due on at least a monthly basis. Thus, for example, employees told they will receive a commission of 1 percent of all monthly sales orders that exceed $1 million must receive any commission due each month. Of course, if sales do not exceed $1 million in a particular month, no commission is due for that month. Similarly, employees who are told they will receive a $300 production bonus for each ton of product manufactured in excess of a weekly quota must receive any bonus earned at least monthly. Again, there may be months in which no bonus is due because production did not exceed the quota in any week of the month.

(2) If an employee's base salary and non-discretionary compensation do not total at least the minimum guarantee established in § 541.601(a) by end of the year, the employer may, by the next pay period after the end of the year, make a final payment sufficient to achieve the guaranteed level. For example, an employee may earn $36,000 in guaranteed base salary, and the employer may anticipate based upon past sales that the employee also will earn $36,000 in commissions. However, due to poor sales in the final quarter of the year, the employee actually only earns $26,000 in commissions. In this situation, the employer may by the next pay period after the end of the year make a payment of $3,000 to the employee. If the employer fails to make such a payment, the employee does not qualify as a highly compensated employee, but may still qualify as exempt under subparts B, C or D of this part.

(3) An employee who does not work a full year for the employer, either because the employee is newly hired after the beginning of the year or ends the employment before the end of the year, may qualify for exemption under this section if the employee receives a *pro rata* portion of the minimum guarantee established in § 541.601(a), based upon the number of weeks that the employee will be or has been employed. The employer may utilize any 52-week period as the year, such as a calendar year, a fiscal year, or an anniversary of hire year. If the employer does not identify some other year period in advance, the calendar year will apply.

(c) A high level of compensation is a strong indicator of an employee's exempt status, thus eliminating the need for a detailed analysis of the employee's job duties. Thus, a highly compensated employee may qualify for exemption if the employee performs any one or more of the exempt duties or responsibilities of an executive, administrative or professional employee identified in subparts B, C or D of this part. Thus, an employee may qualify as a highly compensated executive employee, for example, if the employee directs the work of two or more other employees, even though the employee does not have authority to hire and fire.

(d) This section applies only to employees performing office or non-manual work. carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, construction workers, teamsters and other employees who perform manual work are not exempt under this section no matter how highly paid they might be.

§ 541.602 Salary basis.

(a) *General rule.* An employee will be considered to be paid on a ''salary basis'' within the meaning of these regulations if the employee regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of the employee's compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed. Subject to the exceptions provided in paragraph (b) of this section, an exempt employee must receive the full salary for any week in which the employee performs any work without regard to the number of days or hours worked. Exempt employees need not be paid for any workweek in which they perform no work. An employee is not paid on a salary basis if deductions from the employee's predetermined compensation are made for absences occasioned by the employer or by the operating requirements of the business. If the employee is ready, willing and able to work, deductions may not be made for time when work is not available.

(b) *Exceptions.* The prohibition against deductions from pay in the salary basis requirement is subject to the following exceptions:

(1) Deductions from pay may be made when an exempt employee is absent from work for a full day for personal reasons, other than sickness or disability. Thus, if an employee is absent for two full days to handle personal affairs, the employee's salaried status will not be affected if deductions are made from the salary for two full-day absences. However, if an exempt employee is absent for one and a half days for personal reasons, the employer can deduct only for the one full-day absence.

(2) Deductions from pay may be made for absences of a full day or more occasioned by sickness or disability (including work-related accidents) if the deduction is made in accordance with a *bona fide* plan, policy or practice of providing compensation for loss of salary occasioned by such sickness or disability. The employer is not required to pay any portion of the employee's salary for full day absences for which the employee receives compensation under the plan, policy or practice. Deductions for such full day absences also may be made before the employee has qualified under the plan, policy or practice, and after the employee has exhausted the leave allowance thereunder. Thus, for example, if an employer maintains a short-term disability insurance plan providing salary replacement for 12 weeks starting on the fourth day of absence, the employer may make deductions from pay for the three days of absence before the employee qualifies for benefits under the plan; for the twelve weeks in which the employee receives salary replacement benefits under the plan; and for absences after the employee has exhausted the 12 weeks of salary replacement benefits. Similarly, an employer may make deductions from pay for absences of a full day or more if salary replacement benefits are provided under a State disability insurance law or under a State workers' compensation law.

(3) While an employer cannot make deductions from pay for absences of an exempt employee occasioned by jury duty, attendance as a witness or temporary military leave, the employer can offset any amounts received by an employee as jury fees, witness fees or military pay for a particular week against the salary due for that particular week without loss of the exemption.

(4) Deductions from pay of exempt employees may be made for penalties imposed in good faith for infractions of

safety rules of major significance. Safety rules of major significance include those relating to the prevention of serious danger in the workplace or to other employees, such as rules prohibiting smoking in explosive plants, oil refineries and coal mines.

(5) Deductions from pay of exempt employees may be made for unpaid disciplinary suspensions of a full day or more imposed in good faith for infractions of workplace conduct rules. Such suspensions must be imposed pursuant to a written policy applied uniformly to all workers. Thus, for example, an employer may suspend an exempt employee without pay for three days for violating a uniformly applied written policy prohibiting sexual harassment. Similarly, an employer may suspend an exempt employee without pay for twelve days for violating a uniformly applied written policy prohibiting workplace violence.

(6) An employer is not required to pay the full salary in the initial or terminal week of employment. Rather, an employer may pay a proportionate part of an employee's full salary for the time actually worked in the first and last week of employment. In such weeks, the payment of an hourly or daily equivalent of the employee's full salary for the time actually worked will meet the requirement. However, employees are not paid on a salary basis within the meaning of these regulations if they are employed occasionally for a few days, and the employer pays them a proportionate part of the weekly salary when so employed.

(7) An employer is not required to pay the full salary for weeks in which an exempt employee takes unpaid leave under the Family and Medical Leave Act. Rather, when an exempt employee takes unpaid leave under the Family and Medical Leave Act, an employer may pay a proportionate part of the full salary for time actually worked. For example, if an employee who normally works forty hours per week uses four hours of unpaid leave under the Family and Medical Leave Act, the employer could deduct 10% of the employee's normal salary that week.

(c) When calculating the amount of a deduction from pay allowed under paragraph (b) of this section, the employer may use the hourly or daily equivalent of the employee's full weekly salary or any other amount proportional to the time actually missed by the employee. A deduction from pay as a penalty for violations of major safety rules under paragraph (b)(4) of this section may be made in any amount.

§ 541.603 Effect of improper deductions from salary.

(a) An employer who makes improper deductions from salary shall lose the exemption if the facts demonstrate that the employer has a pattern and practice of not paying employees on a salary basis. A pattern and practice of making improper deductions demonstrates that the employer did not intend to pay employees in the job classification on a salary basis. Improper deductions that are isolated or inadvertent, however, will not result in loss of the exemption. The factors to consider when determining whether an employer has a pattern and practice of not paying employees on a salary basis include, but are not limited to: The number of improper deductions; the time period during which the employer made improper deductions; the number and geographic location of employees whose salary was improperly reduced; the number and geographic location of managers responsible for taking the improper deductions; the size of the employer; whether the employer has a written policy prohibiting improper deductions; and whether the employer corrected the improper pay deductions.

(b) If the facts demonstrate that the employer has a policy of not paying on a salary basis, the exemption is lost during the time period in which improper deductions were made for employees in the same job classification working for the same managers responsible for the improper deductions. Employees in different job classifications who work for different managers do not lose their status as exempt employees. Thus, for example, if a manager at a company facility routinely docks the pay of engineers at that facility for partial-day personal absences, then all engineers at that facility whose pay could have been improperly docked by the manager would lose the exemption; engineers at other facilities or working for other managers, however, would remain exempt.

(c) If an employer has a written policy prohibiting improper pay deductions as provided in § 541.602, notifies employees of that policy and reimburses employees for any improper deductions, such employer will not lose the exemption for any employees unless the employer repeatedly and willfully violates the policy or continues to make improper deductions after receiving employee complaints. Examples of notification include publishing the policy to employees at the time of hire, in an employee handbook or on the employer's Intranet.

(d) This section shall not be construed in an unduly technical manner so as to defeat the exemption.

§ 541.604 Minimum guarantees plus extras.

(a) An exempt employee may receive additional compensation, consistent with the exemption and the salary basis requirement, if the employment arrangement also includes a guarantee of at least the minimum weekly-required amount paid on a salary basis. Thus, for example, an exempt employee guaranteed at least $425 each week paid on a salary basis may also receive additional compensation of a one percent commission on sales. An exempt employee also may receive a percentage of the sales or profits of the employer if the employment arrangement also includes a guarantee of at least $425 each week paid on a salary basis. Similarly, the exemption is not lost if an exempt employee who is guaranteed at least $425 each week paid on a salary basis also receives additional compensation based on hours worked. Such additional compensation may be paid on any basis (*e.g.* flat sum, bonus payment, straight-time hourly amount, time and one-half or any other basis).

(b) An exempt employee's salary may be computed on an hourly, a daily or a shift basis, consistent with the exemption and the salary basis requirement, if the employment arrangement also includes a guarantee of at least the minimum weekly required amount paid on a salary basis regardless of the number of hours, days or shifts worked and a reasonable relationship exists between the guaranteed amount and the amount actually earned. The reasonable relationship test will be met if the weekly guarantee is roughly equivalent to the employee's usual earnings at the assigned hourly, daily or shift rate for the employee's normal scheduled workweek. Thus, for example, an exempt employee guaranteed compensation of at least $500 for any week in which the employee performs any work, and who normally works four or five shifts each week, may be paid $150 per shift consistent with the salary basis requirement.

§ 541.605 Fee basis.

(a) Administrative and professional employees may be paid on a fee basis, rather than on a salary basis. An employee will be considered to be paid on a ''fee basis'' within the meaning of these regulations if the employee is paid an agreed sum for a single job regardless of the time required for its completion. These payments in a sense resemble

piecework payments with the important distinction that generally a ''fee'' is paid for the kind of job that is unique rather than for a series of jobs repeated an indefinite number of times and for which payment on an identical basis is made over and over again. Payments based on the number of hours or days worked and not on the accomplishment of a given single task are not considered payments on a fee basis.

(b) To determine whether the fee payment meets the minimum amount of salary required for exemption under these regulations, the amount paid to the employee will be tested by determining the time worked on the job and whether the fee payment is at a rate that would amount to at least $425 per week if the employee worked 40 hours. Thus, an artist paid $250 for a picture that took 20 hours to complete meets the minimum salary requirement for exemption since earnings at this rate would yield the artist $500 if 40 hours were worked.

§ 541.606 Board, lodging or other facilities.

(a) To qualify for exemption under section 13(a)(1) of the Act, an employee must earn the minimum salary amount set forth in § 541.600, ''exclusive of board, lodging or other facilities.'' The phrase ''exclusive of board, lodging or other facilities'' means ''free and clear'' or independent of any claimed credit for non-cash items of value that an employer may provide to an employee. Thus, the costs incurred by an employer to provide an employee with board, lodging or other facilities may not count towards the minimum salary amount required for exemption under this part 541. Such separate transactions are not prohibited between employers and their exempt employees, but the costs to employers associated with such transactions may not be considered when determining if an employee has received the full required minimum salary payment.

(b) Regulations defining what constitutes ''board, lodging, or other facilities'' are contained in 29 CFR part 531. As described in 29 CFR 531.32, the term ''other facilities'' refers to items similar to board and lodging, such as meals furnished at company restaurants or cafeterias or by hospitals, hotels, or restaurants to their employees; meals, dormitory rooms, and tuition furnished by a college to its student employees; merchandise furnished at company stores or commissaries, including articles of food, clothing, and household effects; housing furnished for dwelling purposes; and transportation furnished to employees for ordinary commuting between their homes and work.

Subpart H—Definitions and Miscellaneous Provisions

§ 541.700 Primary duty.

To qualify for exemption under this part, an employee must have a ''primary duty'' of performing exempt work. The term ''primary duty'' means the principal, main, major or most important duty that the employee performs. Determination of an employee's primary duty must be based on all the facts in a particular case. Factors to consider when determining the primary duty of an employee include, but are not limited to the relative importance of the exempt duties as compared with other types of duties; the amount of time spent performing exempt work; the employee's relative freedom from direct supervision; and the relationship between the employee's salary and the wages paid to other employees for the same kind of nonexempt work. The term ''primary duty'' does not require that employees spend over fifty percent of their time performing exempt work. Thus, for example, an assistant manager in a retail establishment who performs exempt work such as supervising and directing the work of other employees, ordering merchandise, handling customer complaints and authorizing payment of bills may have management as the primary duty, even if the assistant manager spends more than fifty percent of the time performing non-exempt work such as running the cash register. However, the amount of time spent performing exempt work can be a useful guide, and employees who spend over fifty percent of the time performing exempt work will be considered to have a primary duty of performing exempt work. The fact that an employer has well-defined operating policies or procedures should not by itself defeat an employee's exempt status.

§ 541.701 Customarily and regularly.

The phrase ''customarily and regularly'' means a frequency that must be greater than occasional but which, of course, may be less than constant. Tasks or work performed ''customarily and regularly'' includes work normally and recurrently performed every work week; it does not included isolated or one-time tasks.

§ 541.702 Exempt and nonexempt work.

The term ''exempt work'' means all work described in §§ 541.100, 541.101, 541.102, 541.200, 541.206, 541.300, 541.301, 541.302, 541.303, 541.304, 541.400 and 541.500, and the activities directly and closely related to such work. All other work is considered ''nonexempt.''

§ 541.703 Directly and closely related.

(a) Work that is ''directly and closely related'' to the performance of exempt work is also considered exempt work. The phrase ''directly and closely related'' means tasks that are related to exempt duties and that contribute to or facilitate performance of exempt work. Thus, ''directly and closely related'' work may include physical tasks and menial tasks that arise out of exempt duties, and the routine work without which the exempt employee's more important work cannot be performed properly. Work ''directly and closely related'' to the performance of exempt duties may also include recordkeeping; monitoring and adjusting machinery; taking notes; using the computer to create documents or presentations; opening the mail for the purpose of reading it and making decisions; and using a photocopier or fax machine. Work is not ''directly and closely related'' if the work is remotely related or completely unrelated to exempt duties.

(b) The following examples further illustrate the type of work that is and is not normally considered as directly and closely related to exempt work:

(1) Keeping time, production or sales records for subordinates is work directly and closely related to an exempt executive's function of managing a department and supervising employees.

(2) The distribution of materials, merchandise or supplies to maintain control of the flow of and expenditures for such items is directly and closely related to the performance of exempt duties.

(3) A supervisor who spot checks and examines the work of subordinates to determine whether they are performing their duties properly, and whether the product is satisfactory, is performing work which is directly and closely related to managerial and supervisory functions, so long as the checking is distinguishable from the work ordinarily performed by a nonexempt inspector.

(4) A supervisor who sets up a machine may be engaged in exempt work, depending upon the nature of the industry and the operation. In some cases the setup work, or adjustment of the machine for a particular job, is typically performed by the same employees who operate the machine. Such setup work is part of the production operation and is not exempt. In other cases, the setting up of the work is a highly skilled operation which the ordinary production worker or machine

tender typically does not perform. In large plants, non-supervisors may perform such work. However, particularly in small plants, such work is a regular duty of the executive and is directly and closely related to the executive's responsibility for the work performance of subordinates and for the adequacy of the final product. Under such circumstances, it is exempt work.

(5) A department manager in a retail or service establishment who walks about the sales floor observing the work of sales personnel under the employee's supervision to determine the effectiveness of their sales techniques, checks on the quality of customer service being given, or observes customer preferences is performing work which is directly and closely related to managerial and supervisory functions.

(6) A business consultant may take extensive notes recording the flow of work and materials through the office or plant of the client; after returning to the office of the employer, the consultant may personally use the computer to type a report and create a proposed table of organization. Standing alone, or separated from the primary duty, such note taking and typing would be routine in nature. However, because this work is necessary for analyzing the data and making recommendations, the work is directly and closely related to exempt work. While it is possible to assign note taking and typing to nonexempt employees, and in fact it is frequently the practice to do so, delegating such routine tasks is not required as a condition of exemption.

(7) A credit manager who makes and administers the credit policy of the employer, establishes credit limits for customers, authorizes the shipment of orders on credit, and makes decisions on whether to exceed credit limits would be performing work exempt under § 541.200. Work that is directly and closely related to these exempt duties may include checking the status of accounts to determine whether the credit limit would be exceeded by the shipment of a new order, removing credit reports from the files for analysis, and writing letters giving credit data and experience to other employers or credit agencies.

(8) A traffic manager in charge of planning a company's transportation, including the most economical and quickest routes for shipping merchandise to and from the plant, contracting for common-carrier and other transportation facilities, negotiating with carriers for adjustments for damages to merchandise, and making the necessary rearrangements resulting from delays, damages or irregularities in transit is performing exempt work. If the employee also spends part of the day taking telephone orders for local deliveries, such order-taking is a routine function and is not directly and closely related to the exempt work.

(9) An example of work directly and closely related to exempt professional duties is a chemist performing menial tasks such as cleaning a test tube in the middle of an original experiment, even though such menial tasks can be assigned to laboratory assistants.

(10) A teacher performs work directly and closely related to exempt duties when, while taking students on a field trip, the teacher drives a school van or monitors the students' behavior in a restaurant.

§ 541.704 Trainees.

The executive, administrative, professional, outside sales and computer employee exemptions do not apply to employees training for employment in an executive, administrative, professional, outside sales or computer employee capacity who are not actually performing the duties of an executive, administrative, professional, outside sales or computer employee.

§ 541.705 Emergencies.

(a) An exempt employee will not lose the exemption by performing work of a normally nonexempt nature because of the existence of an emergency. Thus, when emergencies arise that threaten the safety of employees, a cessation of operations or serious damage to the employer's property, any work performed in an effort to prevent such results is considered exempt work.

(b) An ''emergency'' does not include occurrences that are not beyond control or for which the employer can reasonably provide in the normal course of business. Emergencies generally occur only rarely, and are events that the employer cannot reasonably anticipate.

(c) The following examples illustrate the distinction between emergency work considered exempt work and routine work that is not exempt work:

(1) A mine superintendent who pitches in after an explosion and digs out workers who are trapped in the mine is still a *bona fide* executive.

(2) Assisting nonexempt employees with their work during periods of heavy workload or to handle rush orders is not exempt work.

(3) Replacing a nonexempt employee during the first day or partial day of an illness may be considered exempt emergency work depending on factors such as the size of the establishment and of the executive's department, the nature of the industry, the consequences that would flow from the failure to replace the ailing employee immediately, and the feasibility of filling the employee's place promptly.

(4) Regular repair and cleaning of equipment is not emergency work, even when necessary to prevent fire or explosion; however, repairing equipment may be emergency work if the breakdown of or damage to the equipment was caused by accident or carelessness that the employer could not reasonably anticipate.

§ 541.706 Occasional tasks.

Occasional, infrequently recurring tasks that cannot practicably be performed by nonexempt employees, but are the means for an exempt employee to properly carry out exempt functions and responsibilities, are considered exempt work. The following factors should be considered in determining whether such work is exempt work: whether the same work is performed by any of the executive's subordinates; practicability of delegating the work to a nonexempt employee; whether the executive performs the task frequently or occasionally; and existence of an industry practice for the executive to perform the task.

§ 541.707 Combination exemptions.

Employees who perform a combination of exempt duties as set forth in these regulations for executive, administrative, professional, outside sales and computer employees may qualify for exemption. Thus, for example, an employee who works forty percent of the time performing exempt administrative duties and another forty percent of the time performing exempt executive duties may qualify for exemption. In other words, work that is exempt under one section of this part will not defeat the exemption under any other section.

§ 541.708 Motion picture producing industry.

The requirement that the employee be paid ''on a salary basis'' does not apply to an employee in the motion picture producing industry who is compensated at a base rate of at least $650 a week (exclusive of board, lodging, or other facilities). Thus, an employee in this industry who is otherwise exempt under subparts B, C and D of this part, and who is employed at a base rate of at least $650 a week is exempt if paid a proportionate amount (based on a week

of not more than 6 days) for any week in which the employee does not work a full workweek for any reason. Moreover, an otherwise exempt employee in this industry qualifies for exemption if the employee is employed at a daily rate under the following circumstances:

(a) The employee is in a job category for which a weekly base rate is not provided and the daily base rate would yield at least $650 if 6 days were worked; or

(b) The employee is in a job category having a weekly base rate of at least $650 and the daily base rate is at least one-sixth of such weekly base rate.

§ 541.709 Employees of public agencies.

(a) An employee of a public agency who otherwise meets the salary basis requirements of § 541.602 shall not be disqualified from exemption under §§ 541.100, 541.200, 541.300 or 541.400 on the basis that such employee is paid according to a pay system established by statute, ordinance or regulation, or by a policy or practice established pursuant to principles of public accountability, under which the employee accrues personal leave and sick leave and which requires the public agency employee's pay to be reduced or such employee to be placed on leave without pay for absences for personal reasons or because of illness or injury of less than one work-day when accrued leave is not used by an employee because:

(1) Permission for its use has not been sought or has been sought and denied;

(2) Accrued leave has been exhausted; or

(3) The employee chooses to use leave without pay.

(b) Deductions from the pay of an employee of a public agency for absences due to a budget-required furlough shall not disqualify the employee from being paid on a salary basis except in the workweek in which the furlough occurs and for which the employee's pay is accordingly reduced.

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Part III

Securities and Exchange Commission

17 CFR Parts 228, 229, 240, et al.
Certification of Disclosure in Certain Exchange Act Reports; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 240, 249, 270 and 274

[Release Nos. 33–8212, 34–47551, IC–25967; File No. S7–06–03]

RIN 3235–AI79

Certification of Disclosure in Certain Exchange Act Reports

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule; interim guidance regarding filing procedures.

SUMMARY: We are proposing amendments to our rules and forms under the Securities Exchange Act of 1934 and the Investment Company Act of 1940 to require issuers to provide the certifications required by sections 302 and 906 of the Sarbanes-Oxley Act of 2002 as exhibits to the periodic reports to which they relate. We also are publishing guidance about how the certifications required by section 906 may ''accompany'' a periodic report to which they relate, pending the adoption of final rules.

DATES: Comments must be received on or before May 15, 2003.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following electronic mail address: *rule-comments@sec.gov.* To help us process and review your comments more efficiently, comments should be submitted by one method only. All comment letters should refer to File No. S7–06–03; this file number should be included in the subject line if electronic mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet Web site (*http://www.sec.gov*).[1]

FOR FURTHER INFORMATION CONTACT: Mark A. Borges or Andrew Thorpe, Special Counsel, Office of Rulemaking, Division of Corporation Finance, at (202) 942–2910, or Carol McGee or Jonathan Ingram, Special Counsel, Office of Chief Counsel, Division of Corporation Finance, at (202) 942–2900, or, with respect to investment companies, Christian Broadbent, Senior Counsel, Office of Disclosure Regulation, Division of Investment Management, at (202) 942–0721, at the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are proposing amendments to Item 601[2] of Regulation S–B,[3] Item 601[4] of Regulation S–K,[5] Rules 12b–15,[6] 13a–14,[7] 13a–15,[8] 15d–14[9] and 15d–15[10] under the Securities Exchange Act of 1934,[11] Rules 8b–15,[12] 30a–2[13] and 30a–3[14] under the Investment Company Act of 1940,[15] Forms 10–Q,[16] 10–QSB,[17] 10–K,[18] 10–KSB,[19] 20–F[20] and 40–F[21] under the Securities Exchange Act of 1934 and Form N–CSR[22] under the Securities Exchange Act of 1934 and the Investment Company Act of 1940.

I. Background

On July 30, 2002, the Sarbanes-Oxley Act of 2002 (the ''Act'') was enacted.[23] Section 302 of the Act required the Commission to adopt final rules to be effective by August 29, 2002 under which the principal executive officer or officers and the principal financial officer or officers, or persons performing similar functions, of a company filing periodic reports under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (the ''Exchange Act'')[24] must certify in each quarterly and annual report, among other things, that, based on his or her knowledge:

- The report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading; and
- The financial statements, and other financial information included in the report, fairly present in all material respects the financial condition and results of operations of the issuer as of, and for, the periods presented in the report.[25]

On August 28, 2002, we adopted Exchange Act Rules 13a–14 and 15d–14 and Investment Company Act Rule 30a–2 and amended our periodic report forms to implement this statutory directive.[26] These rules and amendments became effective on August 29, 2002. On January 27, 2003, we adopted Form N–CSR to be used by registered management investment companies to file certified shareholder reports with the Commission.[27]

Section 906 of the Act added new section 1350 to Title 18 of the United States Code,[28] which contains federal criminal provisions. Section 906 contains a certification requirement that is separate and distinct from the certification requirement mandated by section 302.[29] Section 906 provides that each periodic report containing financial statements filed by an issuer[30] with the Commission pursuant to section 13(a) or 15(d) of the Exchange Act must be accompanied by a written statement by the issuer's chief executive officer and chief financial officer (or the equivalent thereof) certifying that:

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[1] We do not edit personal identifying information, such as names or electronic mail addresses, from electronic submission. You should submit only information that you wish to make available publicly.

[2] 17 CFR 228.601.

[3] 17 CFR 228.10 *et seq.*

[4] 17 CFR 229.601.

[5] 17 CFR 229.10 *et seq.*

[6] 17 CFR 240.12b–15.

[7] 17 CFR 240.13a–14.

[8] 17 CFR 240.13a–15.

[9] 17 CFR 240.15d–14.

[10] 17 CFR 240.15d–15.

[11] 15 U.S.C. 78a *et seq.*

[12] 17 CFR 270.8b–15.

[13] 17 CFR 270.30a–2.

[14] 17 CFR 270.30a–3.

[15] 15 U.S.C. 80a–1 *et seq.*

[16] 17 CFR 249.308a.

[17] 17 CFR 249.308b.

[18] 17 CFR 249.310.

[19] 17 CFR 249.310b.

[20] 17 CFR 249.220f.

[21] 17 CFR 249.240f.

[22] 17 CFR 249.331; 17 CFR 274.128.

[23] Pub. L. 107–204, 116 Stat. 745 (2002).

[24] 15 U.S.C. 78m(a) or 78o(d). Section 13(a) of the Exchange Act requires every issuer of a security registered pursuant to section 12 of the Exchange Act [15 U.S.C. 781] to file with the Commission such annual reports and such quarterly reports as the Commission may prescribe. Section 15(d) of the Exchange Act requires each issuer that has filed a registration statement that has become effective pursuant to the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] (the ''Securities Act'') to file such supplementary and periodic information, documents and reports as may be required pursuant to section 13 in respect of a security registered pursuant to section 12, unless the duty to file under section 15(d) has been suspended for any fiscal year. *See* Exchange Act Rule 12h–3 [17 CFR 240.12h–3].

[25] *See* sections 302(a)(2) and (3) of the Act [15 U.S.C. 7241(a)(2) and (3)].

[26] *See* Release No. 33–8124 (Aug. 28, 2002) [67 FR 57276] (the ''Adopting Release'').

[27] *See* Release No. IC–25914 (Jan. 27, 2003) [68 FR 5348].

[28] 18 U.S.C. 1350.

[29] *See* Release No. 34–46300 (Aug. 2, 2002) [67 FR 51508] containing supplemental information on the Commission's original certification proposal in light of the enactment of the Sarbanes-Oxley Act of 2002, at n. 11.

[30] As defined in section 2(a)(7) of the Act [15 U.S.C. 7201(7)], the term ''issuer'' means an issuer (as defined in section 3(a)(8) of the Exchange Act [15 U.S.C. 78c(a)(8)]) the securities of which are registered under section 12 of the Exchange Act, that is required to file reports under section 15(d) of the Exchange Act or that files, or has filed, a registration statement that has not yet become effective under the Securities Act and that has not been withdrawn.

• The report fully complies with the requirements of section 13(a) or 15(d) of the Exchange Act; and

• The information contained in the report fairly presents, in all material respects, the financial condition and results of operations of the issuer.

Section 906 expressly creates new criminal penalties for a knowingly or willfully false certification.[31] This provision became effective on July 30, 2002. As discussed below, we propose to require the inclusion of the certifications required by sections 302 and 906 of the Act as exhibits to the periodic reports to which they relate.

II. Proposed Amendments

A. Section 302 Certifications

To implement section 302's directive that the required certifications be ''in'' each quarterly or annual report filed or submitted under section 13(a) or 15(d) of the Exchange Act, we amended Forms 10–Q, 10–QSB, 10–K, 10–KSB, 20–F and 40–F under the Exchange Act to require the certifications to appear immediately after the signature block at the end of these reports. Because the certifications are part of the text of the report to which they relate, however, investors are not able to easily access the certifications through our Electronic Data Gathering, Analysis and Retrieval (''EDGAR'') system. In addition, the Commission staff must review the actual text of a quarterly or annual report to confirm that the certifications have been filed.

Consequently, we propose to amend our rules and forms to require issuers to file these certifications as an exhibit to the periodic reports to which they relate. Specifically, we propose to amend Item 601 of Regulations S–B and S–K to add the section 302 certifications to the list of required exhibits as new Item 31.[32] With this change, investors using third-party databases to access an issuer's Exchange Act reports should be able to locate the section 302 certifications more easily and efficiently. In addition, the Commission staff should be able to search a periodic report more expeditiously to verify that the required certifications have been included in the report and to review the certifications.

The signatures appearing at the end of the certifications that we propose to require as an exhibit would continue to be part of the periodic reports to which they relate and, therefore, would be subject to the signature requirement of our rules.[33] Aside from our proposal to require issuers to file the section 302 certifications as an exhibit,[34] we do not propose in this release to modify any other substantive aspect of the certification requirements under Exchange Act Rules 13a–14 and 15d–14.[35] In particular, we note that the consequences for failing to file a required certification or making a false or misleading certification would not be affected by the proposed amendments.[36]

B. Section 906 Certifications

Each periodic report containing financial statements filed by an issuer with the Commission pursuant to section 13(a) or 15(d) of the Exchange Act must ''be accompanied by'' a written statement by the issuer's chief executive and financial officers containing the information specified in section 906 of the Act (referred to in this release as the ''section 906 certifications'').[37] After discussions with the Department of Justice, we propose to amend our rules and forms to require issuers to furnish these certifications as an exhibit to the periodic reports to which they relate. Specifically, we propose to amend Exchange Act Rules 13a–14 and 15d–14 to require the submission of the section 906 certifications with the periodic reports to which they relate,[38] and to amend Item 601 of Regulations S-B and S-K to add the section 906 certifications to the list of required exhibits as new Item 32. We also propose to amend Investment Company Act Rule 30a–2 to require the submission of the section 906 certifications with the periodic reports on Form N–CSR to which they relate[39] and Item 10 of Form N–CSR to add the section 906 certifications as a required exhibit.[40] Because the section 906 certification requirement applies to periodic reports containing financial statements that are filed by an issuer pursuant to section 13(a) or 15(d) of the Exchange Act, the proposed exhibit requirement would only apply to reports on Form N–CSR filed under these sections and not to reports on Form N–CSR that are filed under the

[31] *See* section 1350(c) [18 U.S.C. 1350(c)]. An individual who willfully fails to submit a certification required by section 1350 may be subject to criminal prosecution under section 32 of the Exchange Act [15 U.S.C. 78ff]. *See* section 3(b)(1) of the Act [15 U.S.C. 7202(b)(1)].

[32] We recently adopted Form N–CSR, to be used by registered management investment companies to file certified shareholder reports with the Commission. *See* Release No. IC–25914 (Jan. 27, 2003) [68 FR 5348]. As adopted, Form N–CSR requires the section 302 certifications to be filed as an exhibit to a report on Form No–CSR. Item 10(b) of Form No–CSR.

[33] *See* Exchange Act Rule 12b–11(d) [17 CFR 240.12b–11(d)]. Rule 302 of Regulations S–T applies to the signatures appearing in a certification. Regulation S–T contains the rules prescribing requirements for filing information electronically and the procedures for making such filings. Instructions for electronic filing, including technical formatting requirements, are set forth in the EDGAR Filer Manual. *See* Rule 301 of Registration S–T [17 CFR 232.301].

[34] In connection with this change, we are proposing to revise Exchange Act Rules 13a–14(b) and 15d–14(b) and Investment Company Rule 30a–2(b) to delete from those paragraphs the detailed description of the contents of the required certifications and to revise the instructions to Forms 10–Q, 10–QSB, 10–K, 10–KSB and N–CSR to delete the references to the section 302 certification requirements. As proposed, it is contemplated that the specific form and content of the required certifications will be set forth in the exhibit item (or in the appropriate item of the form, in the case of Forms 20–F, 40–F, 40–F and N–CSR). Further, we are proposing to move the definition of the term ''disclosure controls and procedures'' from Exchange Act Rules 13a–14(c) and 15d–14(c) and Investment Company Act Rule 30a–2(c) to new Exchange Act Rules 13a–15(c) and 15d–15(c) and Investment Company Act Rule 30a–3(c), respectively, and to redesignate the subsequent paragraphs of Exchange Act Rules 13a–14 and 15d–14 and Investment Company Act Rule 30a–2. Finally, we are proposing technical conforming amendments to Exchange Act Rules 12b–15, 13a–14(a), 13a–14(d) (proposed to be redesignated as Rule 13a–14(c), 13a–14(e) (proposed to be redesignated as Rule 13a–14(d), 13a–14(f) (proposed to be redesignated as Rule 13a–14(e), 13a–15(a), 15d–14(a), 15d–14(d) (proposed to be redesignated as Rule 15d–14(c)), 15d–14(e) (proposed to be redesignated as Rule 15d–14(d)), 15d–14(f) (proposed to be redesignated as Rule 15d–14(e)) and 15d–15(a).

[35] We note, however, that we have proposed substantive revisions to these rules in conjunction with our consideration of new rules implementing section 404 of the Act [15 U.S.C. 7262]. *See* Release No. 33–8138 (Oct. 22, 2002) [67 FR 66208]. These proposals are pending.

[36] See the Adopting Release at Section II.B.6.

[37] This certification requirement applies to quarterly reports on Forms 10–Q and 10–QSB, annual reports on Forms 10–K, 10–KSB, 20–F and 40–F and semi-annual reports on Form N–CSR containing financial statements. It does not apply to reports that are current reports, such as reports on Forms 6–K [17 CFR 249.306] and 8–K [17 CFR 249.308], rather than periodic reports. In addition, this certification requirement does not apply to issues of asset-backed securities that are not required to file financial statements in their reports. Such entities typically are passive pools of assets, without an audit committee or board of directors or persons acting in a similar capacity. Accordingly, most asset-backed issuers are currently not subject to section 906. Similarly, unit investment trusts (''UITs''), as defined in section 4(2) of the Investment Company Act [15 U.S.C. 80a–4(2)], and small business investment companies (''SBICs'') licensed under the Small Business Investment Act of 1958 are currently not subject to section 906. UITs and SBICs file reports on Form N–SAR pursuant to section 13(a) or 15(d) of the Exchange Act, and reports on Form N–SAR do not contain financial statements.

[38] *See* proposed Exchange Act Rules 13a–14(b) and 15d–14(b). As discussed in n. 34 above, we are proposing to delete existing Exchange Act Rules 13a–14(b) and 15d–14(b).

[39] *See* proposed Investment Company Act Rule 30a–2(b).

[40] *See* proposed Item 10(b) of Form N–CSR. Existing Items 10(a) and 10(b) of Form N–CSR would be redesigned as Items 10(a) and 10(a)(2). We also are proposing technical conforming amendments to Investment Company Act Rules 8b–15 and 30a–2(d) (proposed to be redesignated as Rule 30a–2(c)).

Investment Company Act only.[41] Just as with the section 302 certifications, an exhibit requirement would enable investors and the Commission staff, as well as the Department of Justice, to monitor compliance with this certification requirement more easily and efficiently.

Unlike the section 302 certifications, the section 906 certifications are required only in periodic reports that contain financial statements. In addition, unlike the section 302 certifications, the section 906 certifications may take the form of a single statement signed by an issuer's chief executive and financial officers.[42] Issuers with unusual structures may contact the Office of Chief Counsel in the Commission's Division of Corporation Finance for further guidance on compliance with the section 906 certification requirement.

We propose to amend Exchange Act Rules 13a–14 and 15d–14 and Investment Company Act Rule 30a–2 to require the section 906 certifications to be provided with periodic reports containing financial statements. We also propose to amend Item 601 of Regulations S–B and S–K to add the section 906 certifications to the list of required exhibits to be included in reports filed with the Commission. Each form specified in the exhibit table in Item 601(a) requires a registrant to include as part of the report the exhibits required by Item 601.[43] Consequently, a failure to furnish the section 906 certifications would cause the periodic report to which they relate to be incomplete, thereby violating section 13(a) of the Exchange Act.[44] In addition, referencing the section 906 certifications in Exchange Act Rules 13a–14 and 15d–14 and Investment Company Act Rule 30a–2 would subject these certifications to the signature requirements of Rule 302 of Regulation S–T.[45]

We note that section 906 merely requires that the certifications ''accompany'' a periodic report to which they relate. This is in contrast to section 302, which requires the certifications to be included ''in'' the periodic report. In recognition of this difference, we are proposing to require issuers to ''furnish,'' rather than ''file,'' the section 906 certifications with the Commission.[46] Thus, the certifications would not be subject to liability under section 18 of the Exchange Act.[47] Moreover, the certifications would not be subject to automatic incorporation by reference into an issuer's Securities Act registration statements, which are subject to liability under section 11 of the Securities Act,[48] unless the issuer takes steps to include the certifications in a registration statement. Although section 906 does not explicitly require the certifications to be made public, we believe that it is appropriate to require the certifications to accompany a periodic report in the proposed manner.

III. Interim Guidance Regarding Filing Procedures

As previously discussed, section 906 requires that the written statements of an issuer's chief executive and financial officers ''accompany'' any periodic report containing financial statements filed by the issuer pursuant to section 13(a) or 15(d) of the Exchange Act. To date, issuers have employed a variety of methods to submit the section 906 certifications with the periodic reports to which they relate.[49]

Until we adopt final rules, we encourage issuers to submit the section 906 certifications as an exhibit to the periodic reports to which they relate. An issuer using this approach should designate the certifications as an ''Additional Exhibit'' under Item 99 of Item 601(b) of Regulation S–B or S–K[50] or, in the case of a foreign private issuer, satisfy the exhibit requirements of the appropriate report form.[51] Where the periodic report to which the section 906 certifications relate is being filed electronically via our EDGAR system, which will generally be the case, an issuer should retain the manual signature page for each certification or another document authenticating, acknowledging or otherwise adopting the signature that appears in typed form within the electronic version of the certification. In order to treat these electronically filed signed statements consistent with other electronically filed signed statements, the issuer should insert the following legend after the text of each certification: ''A signed original of this written statement required by section 906 has been provided to [name of issuer] and will be retained by [name of issuer] and furnished to the Securities and Exchange Commission or its staff upon request.'' Where the periodic report to which the section 906 certifications relate is being filed in paper form (where a paper submission is permitted by Regulation S–T), an issuer should file signed originals and conformed copies of each section 906 certification in accordance with the requirements of the relevant report form. A Section 906 certification submitted in this manner will be treated as ''accompanying'' the periodic report to which it relates rather than ''filed'' as part of the report.

IV. General Request for Comment

We are proposing these amendments to enhance the accessibility of the certifications that must be provided in connection with periodic reports filed pursuant to the Exchange Act. We solicit comment, both specific and general, upon each aspect of the proposed amendments. If you would like to submit written comments on the proposed amendments, to suggest changes or to submit comments on other matters that might affect the proposed amendments, we encourage you to do so.

In particular, we solicit comment on the following specific aspects of the proposed amendments:

- Will the inclusion of the section 302 certifications and the section 906 certifications as exhibits make it easier for investors to access this information?
- Are there any means other than those proposed to enhance investor or Commission staff access to the certifications?

[41] *See* General Instruction A of Form N–CSR (Form N–CSR is a combined reporting form to be used for reports of registered management investment companies under section 30(b)(2) of the Investment Company Act of 1940 and sections 13(a) or 15(d) of the Exchange Act); n. 24 above (discussing issuers covered by sections 13(a) and 15(d) of the Exchange Act).

[42] *See* proposed Exchange Act Rules 13a–14(b) and 15d–14(b).

[43] *See* for example, Item 6(a) of Form 10–Q and Item 15(a)(3) of Form 10–K.

[44] *See* also section 3(b)(1) of the Act, which provides that ''[a] violation by any person of this Act . . . shall be treated for all purposes in the same manner as a violation of the Securities Exchange Act of 1934 . . . and any such person shall be subject to the same penalties, and to the same extent, as for a violation of that Act * * *''

[45] *See* Rule 302(b) of Regulation S–T [17 CFR 232.302(b)].

[46] *See*, for example, proposed Item 601(b)(32)(ii) of Regulation S–K.

[47] 15 U.S.C 78r.

[48] 15 U.S.C. 77k.

[49] These methods include: (1) Submitting the statement as non-public paper correspondence; (2) submitting the statement as non-public electronic correspondence with the EDGAR filing of the periodic report; (3) submitting the statement under (1) or (2) above supplemented by an Item 9 Form 8–K report so that the statement is publicly available; (4) submitting the statement as an exhibit to the periodic report; or (5) submitting the statement in the text of the periodic report (typically, below the signature block for the report).

[50] 17 CFR 228.601(b)(99) and 17 CFR 229.601(b)(99).

[51] For a registered management investment company filing reports on Form N–CSR that uses this approach, the EDGAR document type should be EX–99.906CERT for the section 906 certifications. For fiscal annual or semi-annual periods ending on or before March 31, 2003, registered management investment companies other than SBICs must either file Form N–CSR or continue to comply with the certification requirements of Form N–SAR. See Release No. IC–25914 (Jan. 27, 2003) [68 FR 5348, 5356] (discussing transition provisions and compliance dates for requirement to file Form N–CSR).

• Will treatment of section 906 certifications as ''furnished'' to, rather than ''filed'' with, the Commission adequately address liability concerns arising from the proposed requirement that issuers include the certifications in the periodic reports to which the certifications relate?

Finally, we request comment on whether any further changes to our rules and forms are necessary or appropriate to implement the objectives of the proposed amendments or the Act.

V. Paperwork Reduction Act

The rules and forms that we are proposing to amend contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[52] We do not believe that the proposed amendments with respect to the section 302 certifications would alter the burden estimates for Forms 10–K (OMB Control No. 3235–0063), 10–KSB (OMB Control No. 3235–0420), 10–Q (OMB Control No. 3235–0070), 10–QSB (OMB Control No. 3235–0416), 20–F (OMB Control No. 3235–0288) or 40–F (OMB Control No. 3235–0381) previously submitted to, and approved by, the Office of Management and Budget (the ''OMB''). These proposed amendments merely relocate the certifications from the text of quarterly and annual reports filed or submitted under section 13(a) or 15(d) of the Exchange Act to the ''Exhibits'' section of these reports.

The proposed amendments with respect to the section 906 certifications may alter the burden estimates for these reports and for Form N–CSR (OMB Control No. 3235–0570). Accordingly, we are submitting these proposed amendments to the OMB for review in accordance with the PRA.[53] The titles for these collections of information are ''Form 10–K,'' ''Form 10–KSB,'' ''Form 10–Q,'' ''Form 10–QSB,'' ''Form 20–F,'' ''Form 40–F'' and ''Form N–CSR.'' An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a currently valid OMB control number.

A. Summary of Proposed Rules

Section 1350 of Title 18 of the United States Code, added by section 906 of the Act, requires each periodic report containing financial statements filed by an issuer with the Commission pursuant to section 13(a) or 15(d) of the Exchange Act to be accompanied by a written statement by the issuer's chief executive officer and chief financial officer (or the equivalent thereof) certifying that the report fully complies with the requirements of section 13(a) or 15(d) of the Exchange Act and the information contained in the report fairly presents, in all material respects, the financial condition and results of operations of the issuer. By requiring these certifications to be furnished to the Commission as an exhibit to the periodic reports to which they relate, the certifications would become part of the ''collection of information'' required in each periodic report filed with the Commission. Compliance with the proposed exhibit requirement would be mandatory. Under our rules for the retention of manual signatures, issuers would be required to maintain the original certifications for five years. The information required by the proposed amendments would not be kept confidential.

B. Reporting and Cost Burden Estimates

The compliance burden estimates for the proposed collections of information are based on several assumptions. The reporting requirements of section 13 of the Exchange Act apply to entities that have a class of securities registered under section 12 of the Exchange Act. The reporting requirements of section 15(d) of the Exchange Act apply to entities with an effective registration statement under the Securities Act that are not otherwise subject to the registration requirements of section 12 of the Exchange Act. We estimate that there are approximately 13,200 entities that fit these descriptions.[54] In addition, we estimate that there are approximately 3,700 registered management investment companies that are required to file reports on Form N–CSR.

The compliance burden associated with the proposed amendments would be the burden of preparing and including the section 906 certifications in periodic reports containing financial statements filed by an issuer, after the issuer's chief executive and financial officers evaluated the information relevant to making the certification statements. To a large extent, this evaluation is already performed in connection with the section 302 certifications required by Exchange Act Rules 13a–14 and 15d–14 and Investment Company Act Rule 30a–2. We estimate that the proposed amendments to require the section 906 certifications to be included as an exhibit to the periodic reports to which they relate would result in an increase of two burden hours[55] per issuer in connection with preparing each quarterly report on Form 10–Q or 10–QSB and annual report on Form 10–K, 10–KSB, 20–F or 40–F. With respect to semi-annual reports on Form N–CSR, because the financial statements of registered management investment companies are not as complex as those of operating companies, we estimate that the proposed amendments relating to the section 906 certifications would result in an increase of one burden hour per portfolio.[56]

In the case of domestic issuers, based on a burden hour estimate of eight hours per respondent per year,[57] we estimate that, in the aggregate, all respondents will incur approximately 105,384 burden hours[58] to comply with the proposed amendments. The total burden hours of complying with Forms 10–Q and 10–QSB, revised to include the burden hours expected from the proposed amendments, is estimated to be 3,334,256 hours for Form 10–Q, an increase of 56,304 hours[59] from the current annual burden of 3,277,952 hours, and 1,497,884 hours for Form 10–QSB, an increase of 22,734 hours[60] from the current annual burden of 1,475,150 hours. The total burden hours of complying with Forms 10–K and 10–KSB, revised to include the burden hours expected from the proposed amendments, is estimated to be 11,535,739 hours for Form 10–K, an increase of 18,768 hours[61] from the current annual burden of 11,516,971 hours, and 3,619,627 hours for Form 10–KSB, an increase of 7,578 hours[62]

[52] 44 U.S.C. 3501 *et seq.*

[53] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[54] This estimate is based on the total number of companies that filed annual reports on Form 10–K (9,384) or Form 10–KSB (3,789) during the 2001 fiscal year, which are required of all companies with a class of securities registered under section 12 of the Exchange Act and all companies subject to section 15(d) of the Exchange Act.

[55] This estimate is based on consultations with several law firms and other persons who regularly assist registrants in preparing and filing periodic reports containing financial statements with the Commission.

[56] Many registered management investment companies have multiple portfolios. However, they prepare separate financial statements for each portfolio. Thus, the burden of the section 1350 certifications is estimated on a portfolio basis rather than a registered management investment company basis.

[57] Three quarterly reports and one annual report at an estimated two burden hours per report equals eight hours.

[58] 13,173 companies multiplied by eight burden hours each equals 105,384 hours.

[59] 28,152 quarterly reports multiplied by two burden hours each equals 56,304 hours.

[60] 11,367 quarterly reports multiplied by two burden hours each equals 22,734 hours.

[61] 9,384 annual reports multiplied by two burden hours each equals 18,768 hours.

[62] 3,789 annual reports multiplied by two burden hours each equals 7,578 hours.

from the current annual burden of 3,612,049 hours. Based on a burden hour estimate of two hours per portfolio per year, we estimate that the total burden hours of complying with Form N–CSR for registered management investment companies, revised to include the burden hours expected from the proposed amendments, will be 142,498 hours, an increase of 19,700 hours[63] from the current annual burden of 122,798 hours.

In the case of foreign private issuers, based on a burden hour estimate of two hours per respondent per year, we estimate that the total burden hours of complying with Forms 20–F and 40–F, revised to include the burden hours expected from the proposed amendments, will be 655,521.25 hours for Form 20–F, an increase of 2,400[64] from the current annual burden of 653,121.25 hours, and 1,412.25 hours for Form 40–F, an increase of 200 hours[65] from the current annual burden of 1,212.25 hours.

C. Request for Comment

We request comment in order to: (a) Evaluate whether the proposed information collections are necessary for the proper performance of the functions of the Commission, including whether the information would have practical utility; (b) evaluate the accuracy of our estimate of the burden of the proposed amendments; (c) determine whether there are ways to enhance the quality, utility and clarity of the information to be collected; and (d) evaluate whether there are ways to minimize the burden of the proposed amendments on those who respond, including through the use of automated collection techniques or other forms of information technology.[66]

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing the burdens. Persons who desire to submit comments on the proposed collection of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy of the comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609, with reference to File No. S7–06–03. Requests for materials submitted to the OMB by us with regard to these collections of information should be in writing, refer to File No. S7–06–03 and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street NW., Washington, DC 20549. Because the OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, your comments are best assured of having their full effect if the OMB receives them within 30 days of publication.

VI. Cost-Benefit Analysis

The proposed amendments would relocate the certifications required by Exchange Act Rules 13a–14 and 15d–14 from the text of quarterly and annual reports filed or submitted under section 13(a) or 15(d) of the Exchange Act to the ''Exhibits'' section of these reports. The proposed amendments also would require that the certifications required by section 1350 of Title 18 of the United States Code, added by section 906 of the Act, accompany the periodic reports to which they relate as an exhibit to these reports. These changes should enhance the ability of investors and the Commission staff to verify that the certifications have, in fact, been submitted with the Exchange Act reports to which they relate and to review the contents of the certifications to ensure compliance with the applicable requirements. In addition, the changes should enable the Department of Justice, which has responsibility for enforcing section 906, to effectively review the form and content of the certifications required by that provision.

Since issuers must already include the certifications required by Exchange Act Rules 13a–14 and 15d–14 in their quarterly and annual reports, there should be no incremental cost to relocating the certifications from the text of the reports to the ''Exhibits'' section of these reports. Requiring the section 906 certifications to be included as an exhibit to the periodic reports to which they relate may lead to some additional costs for issuers that currently are submitting the certifications to the Commission in some other manner. While these costs are difficult to quantify, we estimate that the annual paperwork burden of the proposed amendments would be approximately $25.5 million.[67]

To the extent that issuers may assume greater legal risk by including the section 906 certifications as part of their periodic reports filed pursuant to the Exchange Act where these reports are incorporated by reference into Securities Act registration statements, we address this risk by proposing to require issuers to ''furnish,'' rather than ''file,'' the certifications with the Commission for purposes of section 18 of the Exchange Act or incorporation by reference into other filings. Thus, the proposed amendments should mitigate this potential indirect cost of compliance.

VII. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis, or IRFA, has been prepared in accordance with the Regulatory Flexibility Act.[68] It involves proposed amendments that would relocate the certifications required by Exchange Act Rules 13a–14 and 15d–14 from the text of quarterly and annual reports filed or submitted under section 13(a) or 15(d) of the Exchange Act to the ''Exhibits'' section of these reports, and require that the certifications required by section 1350 of Title 18 of the United States Code, added by section 906 of the Act, accompany the periodic reports to which they relate as an exhibit to these reports.

A. Reasons for, and Objectives of, Proposed Rule and Form Amendments

The relocation of the certifications required by Exchange Act Rules 13a–14 and 15d–14 from the text of quarterly and annual reports to the ''Exhibits'' section of these reports should enhance the ability of investors and the Commission staff to verify that the certifications have, in fact, been submitted with the Exchange Act reports to which they relate and to review the contents of the certifications to ensure compliance with the applicable requirements. In addition, the proposed amendments should

[63] This estimate is based on the current annual burden for registered management investment companies required to file reports on Form N–CSR. We estimate that there are 3,700 registered management investment companies that will file reports on Form N–CSR, containing 9,850 portfolios. The estimate of 19,700 hours is calculated by 9,850 portfolios x two filings per year x one burden hour.

[64] This estimate is based on the current annual burden per filing for each foreign private issuer. The estimate of 2,400 hours is based on an estimate of 1,200 foreign private issuers with one filing per year multiplied by two burden hours for each filing.

[65] This estimate is based on the current annual burden per filing for each Canadian issuer. The estimate of 200 hours is based on an estimate of 100 Canadian issuers with one filing per year multiplied by two burden hours for each filing.

[66] Comments are requested pursuant to 44 U.S.C. 3506(c)(2)(B).

[67] This calculation is based on an estimate of 127,684 burden hours (see nn. 58, 63, 64 and 65 above) multiplied by a cost of $200.00 per hour. (127,684 hours multiplied by $200.00 per hour equals $25,536,800) The hourly cost estimate is based on consultations with several registrants and law firms and other persons who regularly assist registrants in preparing and filing periodic reports with the Commission.

[68] 5 U.S.C. 603.

enable the Department of Justice, which has responsibility for enforcing section 1350, to efficiently review the form and content of the certifications required by that provision.

B. Legal Basis

We are proposing the amendments under the authority set forth in sections 13, 15(d), 23(a) and 36 of the Exchange Act, sections 8, 30 and 38 of the Investment Company Act and sections 3(a), 302 and 906 of the Sarbanes-Oxley Act of 2002.

C. Small Entities Subject to the Proposed Rule and Form Amendments

The proposed amendments would affect small entities that are subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act. For purposes of the Regulatory Flexibility Act, the Exchange Act defines the term ''small business,'' other than an investment company, to be an issuer that, on the last day of its most recent fiscal year, has total assets of $5 million or less.[69] We estimate that there are approximately 2,500 companies subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act that are not investment companies and that have assets of $5 million or less.[70]

For purposes of the Regulatory Flexibility Act, an investment company is a ''small entity'' if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[71] We estimate that there are approximately 205 registered management investment companies that, together with other investment companies in the same group of related investment companies, have net assets of $50 million or less as of the end of the most recent fiscal year.[72]

D. Reporting, Recordkeeping and Other Compliance Requirements

The proposed amendments would require issuers, including ''small businesses,'' to provide the certifications required by Exchange Act Rules 13a–14 and 15d–14, as well as the certifications required by section 906, as exhibits to the periodic reports to which they relate. Depending on how an issuer's chief executive and financial officers presently satisfy the section 906 certification requirements, issuers, including ''small businesses,'' may incur some additional costs in submitting these certifications as an exhibit to these reports. While these costs are difficult to quantify, we believe that they would be nominal.

E. Duplicative, Overlapping or Conflicting Federal Rules

Presently, Exchange Act Rules 13a–14 and 15d–14 require an issuer to include in the text of its quarterly and annual reports filed or submitted under section 13(a) or 15(d) of the Exchange Act the required certifications of its principal executive and financial officers. While section 906 requires that written statements of an issuer's chief executive and financial officers certifying the contents of a periodic report to which the certifications relate ''accompany'' the report when it is filed with the Commission, issuers have used a variety of different methods to submit these certifications to the Commission.

F. Agency Action to Minimize Effect on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small entities. In that regard, we are considering the following alternatives: (a) Establishing different compliance or reporting requirements that take into account the resources of small entities, (b) clarifying, consolidating or simplifying compliance and reporting requirements under the rules for small entities and (c) exempting small entities from all or part of the proposed rule and form amendments. Both the section 302 and section 906 certifications are required by the Sarbanes-Oxley Act of 2002 and the legislative history does not reflect a Congressional intent to exempt small entities from these requirements. We are not aware of means to further simplify these requirements. After discussions with the Department of Justice, we believe a design standard for how the section 906 certifications are to ''accompany'' a periodic report is necessary to monitor compliance. We solicit comment as to whether small business issuers should be excluded from the proposed amendments or if other changes are warranted to accommodate the interests of small business issuers.

G. Request for Comments

We encourage the submission of comments with respect to any aspect of the IRFA. In particular, we request comment on the number of small businesses that would be affected by the proposed amendments, the nature of the impact, how to quantify the number of small businesses that would be affected and how to quantify the impact of the proposed rule and form amendments. Commenters are requested to describe the nature of any effect and provide empirical data and other factual support for their views to the extent possible. These comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendments are adopted, and will be placed in the same public file as comments on the proposed amendments.

VIII. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or ''SBREFA,''[73] we must advise the Office of Management and Budget as to whether the proposed amendments constitute a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results or is likely to result in:

- An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease);
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

We request comment on the potential impact of the proposed amendments on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

IX. Consideration of Burden on Competition

Section 23(a)(2) of the Exchange Act[74] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The proposed amendments would relocate the certifications required by Exchange Act Rules 13a–14 and 15d–14 from the text of quarterly and annual reports filed or submitted under section 13(a) or 15(d) of the Exchange Act to the

[69] 17 CFR 240.0–10(a). A similar definition is provided under Securities Act Rule 157 [17 CFR 230.157].

[70] This estimate is based on filings with the Commission.

[71] 17 CFR 270.0–10.

[72] This estimate is based on figures compiled by the Commission staff regarding investment companies registered on Forms N–1A, N–2, and N–3, which will be required to file reports on Form N–CSR.

[73] Pub. L. 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

[74] 15 U.S.C. 78w(a)(2).

''Exhibits'' section of these reports. This relocation should enhance the ability of investors and the Commission staff to verify that the certifications have, in fact, been submitted with the Exchange Act reports to which they relate and to review the contents of the certifications to ensure compliance with the applicable requirements. The proposed amendments also would streamline compliance with section 1350 of Title 18 of the United States Code, added by section 906 of the Act, and should enable investors, the Commission staff and the Department of Justice, which has responsibility for enforcing section 1350, to verify submission and efficiently review the form and content of the certifications required by that provision.

We do not believe that the proposed amendments would impose any burden on competition. Depending on how an issuer's chief executive and financial officers presently satisfy the section 906 certification requirements, issuers may incur some additional costs in submitting these certifications as an exhibit to their periodic reports. While these costs are difficult to quantify, we believe that they would be nominal. We request comment on whether the proposed amendments, if adopted, would promote competition. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

X. Promotion of Efficiency, Competition and Capital Formation

Section 3(f) of the Exchange Act [75] and section 2(c) of the Investment Company Act [76] require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation. The proposed amendments would relocate the certifications required by Exchange Act Rules 13a–14 and 15d–14 from the text of quarterly and annual reports filed or submitted under section 13(a) or 15(d) of the Exchange Act to the ''Exhibits'' section of these reports. This relocation should enhance the ability of investors and the Commission staff to verify that the certifications have, in fact, been submitted with the Exchange Act reports to which they relate and to review the contents of the certifications to ensure compliance with the applicable requirements. The proposed amendments also would streamline compliance with section 1350 of Title 18 of the United States Code, added by section 906 of the Act, and should enable investors, the Commission staff and the Department of Justice, which has responsibility for enforcing section 1350, to verify submission and efficiently review the form and content of the certifications required by that provision.

We do not believe that the proposed amendments would impose any burden on competition. Nor are we aware of any impact on capital formation that would result from the proposed amendments. Depending on how an issuer's chief executive and financial officers presently satisfy the section 906 certification requirements, issuers may incur some additional costs in submitting these certifications as an exhibit to their periodic reports. While these costs are difficult to quantify, we believe that they would be nominal. We request comment on whether the proposed amendments, if adopted, would affect competition, efficiency and capital formation. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

XI. Statutory Authority

The amendments described in this release are being proposed under the authority set forth in sections 13, 15(d), 23(a) and 36 of the Exchange Act, sections 8, 30 and 38 of the Investment Company Act and sections 3(a), 302 and 906 of the Sarbanes-Oxley Act of 2002.

List of Subjects

17 CFR Part 228

Reporting and recordkeeping requirements, Securities, Small businesses.

17 CFR Parts 229, 240 and 249

Reporting and recordkeeping requirements, Securities.

17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of the Proposed Amendments

For the reasons set out in the preamble, the Commission proposes to amend title 17, chapter II, of the Code of Federal Regulations as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The authority citation for Part 228 is amended by revising the authority citation for ''Section 228.601'' to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l,* 78m, 78n, 78o, 78u–5, 78w, 78*ll,* 78mm, 80a–8, 80a–29, 80a–30, 80a–37 and 80b–11.

* * * * *

Section 228.601 is also issued under secs. 3(a), 302, 406 and 906, Pub. L. 107–204, 116. Stat. 745.

2. By amending § 228.601 by:

a. Removing the last sentence of paragraph (a)(1);

b. Revising the Exhibit Table;

c. Revising paragraph (b)(7) to read ''No Exhibit Required.''; and

d. Revising paragraphs (b)(27) through (b)(98).

The revisions read as follows.

§ 228.601 (Item 601) Exhibits.

* * * * *

	Securities Act Forms					Exchange Act Forms			
	SB–2	S–2	S–3	S–4 [3]	S–8	10–SB	8–K	10–QSB	10–KSB
(1) Underwriting agreement	X	X	X	X	.....	.....	X	.....	.....
(2) Plan of purchase, sale, reorganization, arrangement, liquidation or succession.	X	X	X	X	.....	X	X	X	X
(3) (i) Articles of Incorporation	X	.....	.....	X	.....	X	.....	X	X
(ii) By-laws	X	.....	.....	X	.....	X	.....	X	X
(4) Instruments defining the rights of security holders, including indentures	X	X	X	X	X	X	X	X	X
(5) Opinion re: legality	X	X	X	X	X	.....	.....	.....	.....

[75] 15 U.S.C. 78c(f).

[76] 15 U.S.C. 80a–2(c).

	Securities Act Forms					Exchange Act Forms			
	SB–2	S–2	S–3	S–4 [3]	S–8	10–SB	8–K	10–QSB	10–KSB
(6) No exhibit required	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(7) No exhibit required	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(8) Opinion on tax matters	X	X	X	X					
(9) Voting trust agreement and amendments	X			X		X			X
(10) Material contracts	X	X		X		X		X	X
(11) Statement re: computation of per share earnings	X	X		X		X		X	X
(12) No exhibit required	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(13) Annual report to security holders for the last fiscal year, Form 10–Q or 10–QSB or quarterly report to security holders [1]	X	X		X					X
(14) Code of ethics									X
(15) Letter on unaudited interim financial information	X	X	X	X	X			X	
(16) Letter on change in certifying accountant [4]	X	X		X		X	X		X
(17) Letter on director resignation							X		
(18) Letter on change in accounting principles								X	X
(19) Reports furnished to security holders								X	
(20) Other documents or statements to security holders or any document incorporated by reference								X	X
(21) Subsidiaries of the small business issuer	X			X		X			X
(22) Published report regarding matters submitted to vote of security holders								X	X
(23) Consents of experts and counsel	X	X	X	X	X		X [2]	X [2]	X [2]
(24) Power of attorney	X	X	X	X	X	X	X	X	X
(25) Statement of eligibility of trustee	X	X	X	X					
(26) Invitations for competitive bids		X	X	X	X				
(27) through (30) [Reserved]									
(31) Rule 13a–14(a)/15d–14(a) Certifications								X	X
(32) Section 1350 Certifications								X	X
(33) through (98) [Reserved]									
(99) Additional Exhibits	X	X	X	X	X	X	X	X	X

[1] Only if incorporated by reference into a prospectus and delivered to holders along with the prospectus as permitted by the registration statement; or in the case of a Form 10–KSB, where the annual report is incorporated by reference into the text of the Form 10–KSB.
[2] Where the opinion of the expert or counsel has been incorporated by reference into a previously filed Securities Act registration statement.
[3] An issuer need not provide an exhibit if: (1) an election was made under Form S–4 to provide S–2 or S–3 disclosure; and (2) the form selected (S–2 or S–3) would not require the company to provide the exhibit.
[4] If required under item 304 of Regulation S–B.

(b) *Description of exhibits.* * * *

(27) through (30) [Reserved]

(31) *Rule 13a–14(a)/15d–14(a) Certifications.* The certifications required by Rule 13a–14(a) (17 CFR 240.13a–14(a)) or Rule 15d–14(a) (17 CFR 240.15d–14(a)) exactly as set forth below:

Certifications *

I, [identify the certifying individual], certify that:

1. I have reviewed this [specify report] of [identify registrant];

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a–15 and 15d–15) for the registrant and have:

(a) Designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Evaluated the effectiveness of the registrant's disclosure controls and

procedures as of a date within 90 days prior to the filing date of this report (the ''Evaluation Date''); and

(c) Presented in this report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officers and I have indicated in this report whether there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: _____

_____

[Signature]

[Title]

* Provide a separate certification for each principal executive officer and principal financial officer of the registrant. *See* Rules 13a–14(a) and 15d–14(a).

(32) *Section 1350 Certifications.*

(i) The certifications required by Rule 13a–14(b) (17 CFR 240.13a–14(b)) or Rule 15d–14(b) (17 CFR 240.15d–14(b)) and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. 1350).

(ii) A certification furnished pursuant to this item will not be deemed ''filed'' for purposes of Section 18 of the Exchange Act [15 U.S.C. 78r], or otherwise subject to the liability of that section. Such certification will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

(33) through (98) [Reserved]

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

3. The authority citation for part 229 is amended by revising the authority citation for ''Section 229.601'' to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78l, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 79e, 79j, 79n, 79t, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39 and 80b–11, unless otherwise noted.

* * * * *

Section 229.601 is also issued under secs. 3(a), 302, 406 and 906, Pub. L. No. 107–204, 116. Stat. 745.

4. By amending § 229.601 by:

a. Removing the second sentence of paragraph (a)(1);

b. Revising the phrase ''Notwithstanding the provisions of paragraphs (b)(27) and (c) of this Item, registered investment companies'' at the beginning of the third sentence of paragraph (a)(1) to read ''Registered investment companies'';

c. Revising the Exhibit Table which follows the Instructions to the Exhibit Table; and

d. Revising paragraphs (b)(27) through (b)(98).

The revisions read as follows.

§ 229.601 (Item 601) Exhibits.

(a) *Exhibits and index required.* * * *

Instructions to the Exhibit Table

* * * * *

EXHIBIT TABLE

	Securities act forms										Exchange act forms			
	S–1	S–2	S–3	S–4[3]	S–8	S–11	F–1	F–2	F–3	F–4[3]	10	8–K	10–Q	10–K
(1) Underwriting agreement	X	X	X	X	.....	X	X	X	X	X	.....	X		
(2) Plan of acquisition, reorganization, arrangement, liquidation or succession	X	X	X	X	.....	X	X	X	X	X	X	X	X	X
(3)(i) Articles of incorporation	X	.....	.....	X	.....	X	X	.....	.....	X	X	.....	X	X
(ii) By-laws	X	.....	.....	X	.....	X	X	.....	.....	X	X	.....	X	X
(4) Instruments defining the rights of security holders, including indentures	X	X	X	X	X	X	X	X	X	X	X	X	X	X
(5) Opinion re legality	X	X	X	X	X	X	X	X	X	X				
(6) [Reserved]	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(7) [Reserved]	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(8) Opinion re tax matters	X	X	X	X	.....	X	X	X	X	X				
(9) Voting trust agreement	X	.....	.....	X	.....	X	X	.....	.....	X	X	.....	.....	X
(10) Material contracts	X	X	.....	X	.....	X	X	X	.....	X	X	.....	X	X
(11) Statement re computation of per share earnings	X	X	.....	X	.....	X	X	X	.....	X	X	.....	X	X
(12) Statements re computation of ratios	X	X	X	X	.....	X	X	X	.....	X	X	.....	.....	X

EXHIBIT TABLE—Continued

	Securities act forms										Exchange act forms			
	S–1	S–2	S–3	S–4[3]	S–8	S–11	F–1	F–2	F–3	F–4[3]	10	8–K	10–Q	10–K
(13) Annual report to security holders, Form 10–Q or 10–QSB, or quarterly report to security holders[1]	.....	X	.....	X	.....	.....	.....	.....	.....	.....	.....	.....	.....	X
(14) Code of Ethics	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	X
(15) Letter re unaudited interim financial information	X	X	X	X	X	X	X	X	X	X	.....	.....	X	
(16) Letter re change in certifying accountant[4]	X	X	.....	X	.....	X	.....	.....	.....	.....	X	X	.....	X
(17) Letter re director resignation	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	X		
(18) Letter re change in accounting principles	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	X	X
(19) Report furnished to security holders	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	X	
(20) Other documents or statements to security holders	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	X		
(21) Subsidiaries of the registrant	X	.....	.....	X	.....	X	X	.....	.....	X	X	.....	.....	X
(22) Published report regarding matters submitted to vote of security holders	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	X	X
(23) Consents of experts and counsel	X	X	X	X	X	X	X	X	X	X	.....	X[2]	X[2]	X[2]
(24) Power of attorney	X	X	X	X	X	X	X	X	X	X	X	X	X	X
(25) Statement of eligibility of trustee	X	X	X	X	.....	X	X	X	X	X				
(26) Invitations for competitive bids	X	X	X	X	.....	.....	X	X	X	X				
(27) through (30) [Reserved]	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....				
(31) Rule 13a–14(a)/15d–14(a) Certifications	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	X	X
(32) Section 1350 Certifications	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	X	X
(33) through (98) [Reserved]	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(99) Additional Exhibits	X	X	X	X	X	X	X	X	X	X	X	X	X	X

[1] Where incorporated by reference into the text of the prospectus and delivered to security holders along with the prospectus as permitted by the registration statement; or, in the case of the Form 10–K, where the annual report to security holders is incorporated by reference into the text of the Form 10–K.

[2] Where the opinion of the expert or counsel has been incorporated by reference into a previously filed Securities Act registration statement.

[3] An exhibit need not be provided about a company if: (1) With respect to such company an election has been made under Form S–4 or F–4 to provide information about such company at a level prescribed by Forms S–2, S–3, F–2 or F–3 and (2) the form, the level of which has been elected under Forms S–4 or F–4, would not require such company to provide such exhibit if it were registering a primary offering.

[4] If required pursuant to Item 304 of Regulation S–K.

(b) *Description of exhibits.* * * *

(27) through (30) [Reserved]

(31) *Rule 13a–14(a)/15d–14(a) Certifications.* The certifications required by Rule 13a–14(a) (17 CFR 240.13a–14(a)) or Rule 15d–14(a) (17 CFR 240.15d–14(a)) exactly as set forth below:

Certifications*

I, [identify the certifying individual], certify that:

1. I have reviewed this [specify report] of [identify registrant];

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a–15 and 15d–15) for the registrant and have:

(a) Designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within

those entities, particularly during the period in which this report is being prepared;

(b) Evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this report (the ''Evaluation Date''); and

(c) Presented in this report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officers and I have indicated in this report whether there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: _____

[Signature] _____

[Title]

* Provide a separate certification for each principal executive officer and principal financial officer of the registrant. *See* Rules 13a–14 and 15d–14.

(32) *Section 1350 Certifications.*

(i) The certifications required by Rule 13a–14(b) (17 CFR 240.13a–14(b)) or Rule 15d–14(b) (17 CFR 240.15d–14(b)) and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. 1350).

(ii) A certification furnished pursuant to this item will not be deemed ''filed'' for purposes of Section 18 of the Exchange Act [15 U.S.C. 78r], or otherwise subject to the liability of that section. Such certification will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

(33) through (98) [Reserved]

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for Part 240 is amended by revising the authority citations for ''Section 240.12b–15,'' ''Section 240.13a–14'' and ''Section 240.15d–14'' to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78ll, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

Section 240.12b–15 is also issued under secs. 3(a), 302 and 906, Pub. L. No. 107–204, 116 Stat. 745.

* * * * *

Section 240.13a–14 is also issued under secs. 3(a), 302 and 906, Pub. L 107–204, 116 Stat. 745.

* * * * *

Section 240.15d–14 is also issued under secs. 3(a), 302 and 906, Pub. L. 107–204, 116 Stat. 745.

* * * * *

6. By revising § 240.12b–15 to read as follows:

§ 240.12b–15 Amendments.

All amendments must be filed under cover of the form amended, marked with the letter ''A'' to designate the document as an amendment, *e.g.*, ''10–K/A,'' and in compliance with pertinent requirements applicable to statements and reports. Amendments filed pursuant to this section must set forth the complete text of each item as amended. Amendments must be numbered sequentially and be filed separately for each statement or report amended. Amendments to a statement may be filed either before or after registration becomes effective. Amendments must be signed on behalf of the registrant by a duly authorized representative of the registrant. An amendment to any report required to include the certifications as specified in § 240.13a–14(a) or § 240.15d–14(a) must include new certifications by each principal executive officer and principal financial officer of the registrant, and an amendment to any report required to be accompanied by the certifications as specified in § 240.13a–14(b) or § 240.15d–14(b) must be accompanied by new certifications by each chief executive officer and chief financial officer of the registrant. The requirements of the form being amended will govern the number of copies to be filed in connection with a paper format amendment. Electronic filers satisfy the provisions dictating the number of copies by filing one copy of the amendment in electronic format. *See* § 232.309 of this chapter (Rule 309 of Regulation S–T).

7. By amending § 240.13a–14 by:

a. Revising paragraphs (a) and (b);

b. Removing paragraph (c);

c. Redesignating paragraphs (d), (e), (f) and (g) as paragraphs (c), (d), (e) and (f); and

d. Revising newly redesignated paragraph (c), the introductory text of newly redesignated paragraph (d) and newly redesignated paragraph (e).

The revisions read as follows.

§ 240.13a–14 Certification of disclosure in annual and quarterly reports.

(a) Each report, including transition reports, filed on Form 10–Q, Form 10–QSB, Form 10–K, Form 10–KSB, Form 20–F or Form 40–F (§§ 249.308a, 249.308b, 249.310, 249.310b, 249.220f or 249.240f of this chapter) under section 13(a) of the Act (15 U.S.C. 78m(a)), other than a report filed by an Asset-Backed Issuer (as defined in paragraph (f) of this section), must include certifications in the form specified in paragraph (b)(31) of Item 601 of Regulation S–B [17 CFR 228.10 through 228.702] or S–K [17 CFR 229.10 through 229.1016] and filed as Exhibit (31) to such report. Each principal executive officer or officers and principal financial officer or officers of the issuer, or persons performing similar functions, at the time of filing of the report must sign a certification.

(b) Each periodic report containing financial statements filed by an issuer pursuant to section 13(a) of the Act (15 U.S.C. 78m(a)) must be accompanied by certifications in the form specified in paragraph(b)(32) of Item 601 of Regulation S–B [17 CFR 228.10 through 228.702] or S–K [17 CFR 229.10 through 229.1016] and furnished as Exhibit (32) to such report. Each chief executive officer and chief financial officer of the issuer (or equivalent thereof) must sign a certification. This requirement may be satisfied by a single certification signed by an issuer's chief executive officer and chief financial officer.

(c) A person required to provide a certification specified in paragraph (a) or (b) of this section may not have the certification signed on his or her behalf pursuant to a power of attorney or other form of confirming authority.

(d) Each annual report filed by an Asset-Backed Issuer (as defined in paragraph (f) of this section) under section 13(a) of the Act (15 U.S.C.

78m(a)) must include a certification addressing the following items: * * *

(e) With respect to Asset-Backed Issuers, the certification required by paragraph (d) of this section must be signed by the trustee of the trust (if the trustee signs the annual report) or the senior officer in charge of securitization of the depositor (if the depositor signs the annual report). Alternatively, the senior officer in charge of the servicing function of the master servicer (or entity performing the equivalent functions) may sign the certification.

* * * * *

8. By amending § 240.13a–15 by:

a. Revising paragraph (a); and

b. Adding paragraph (c).

The revisions read as follows.

§ 240.13a–15 Issuer's disclosure controls and procedures related to preparation of required reports.

(a) Every issuer that has a class of securities registered pursuant to section 12 of the Act (15 U.S.C. 78*l*), other than an Asset-Backed Issuer (as defined in § 240.13a–14(f) of this chapter), a small business investment company registered on Form N–5 (§§ 239.24 and 274.5 of this chapter), or a unit investment trust as defined in section 4(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–4(2)), must maintain disclosure controls and procedures (as defined in paragraph (c) of this section).

* * * * *

(c) For purposes of this section, the term *disclosure controls and procedures* means controls and other procedures of an issuer that are designed to ensure that information required to be disclosed by the issuer in the reports that it files or submits under the Act (15 U.S.C. 78a *et seq.*) is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by an issuer in the reports that it files or submits under the Act is accumulated and communicated to the issuer's management, including its principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

9. By amending § 240.15d–14 by:

a. Revising paragraphs (a) and (b);

b. Removing paragraph (c);

c. Redesignating paragraphs (d), (e), (f) and (g) as paragraphs (c), (d), (e) and (f); and

d. Revising newly redesignated paragraph (c), the introductory text of newly redesignated paragraph (d) and newly redesignated paragraph (e).

The revisions read as follows.

§ 240.15d–14 Certification of disclosure in annual and quarterly reports.

(a) Each report, including transition reports, filed on Form 10–Q, Form 10–QSB, Form 10–K, Form 10–KSB, Form 20–F or Form 40–F (§§ 249.308a, 249.308b, 249.310, 249.310b, 249.220f or 249.240f of this chapter) under section 15(d) of the Act (15 U.S.C. 78o(d)), other than a report filed by an Asset-Backed Issuer (as defined in paragraph (f) of this section), must include certifications in the form specified in paragraph (b)(31) of Item 601 of Regulation S–B [17 CFR 228.10 through 228.702] or S–K [17 CFR 229.10 through 229.1016] and filed as Exhibit (31) to such report. Each principal executive officer or officers and principal financial officer or officers of the issuer, or persons performing similar functions, at the time of filing of the report must sign a certification.

(b) Each periodic report containing financial statements filed by an issuer pursuant to section 15(d) of the Act (15 U.S.C. 78o(d)) must be accompanied by certifications in the form specified in paragraph (b)(32) of Item 601 of Regulation S–B [17 CFR 228.10 through 228.702] or S–K [17 CFR 229.10 through 229.1016] and furnished as Exhibit (32) to such report. Each chief executive officer and chief financial officer of the issuer (or equivalent thereof) must sign a certification. This requirement may be satisfied by a single certification signed by an issuer's chief executive officer and chief financial officer.

(c) A person required to provide a certification specified in paragraph (a) or (b) of this section may not have the certification signed on his or her behalf pursuant to a power of attorney or other form of confirming authority.

(d) Each annual report filed by an Asset-Backed Issuer (as defined in paragraph (f) of this section) under section 13(a) of the Act (15 U.S.C. 78m(a)) must include a certification addressing the following items: * * *

(e) With respect to Asset-Backed Issuers, the certification required by paragraph (d) of this section must be signed by the trustee of the trust (if the trustee signs the annual report) or the senior officer in charge of securitization of the depositor (if the depositor signs the annual report). Alternatively, the senior officer in charge of the servicing function of the master servicer (or entity performing the equivalent functions) may sign the certification.

* * * * *

10. By amending § 240.15d–15 by:

a. Revising paragraph (a); and

b. Adding paragraph (c).

The revisions read as follows.

§ 240.15d–15 Issuer's disclosure controls and procedures related to preparation of required reports.

(a) Every issuer that has a class of securities registered pursuant to section 12 of the Act (15 U.S.C. 78*l*), other than an Asset-Backed Issuer (as defined in § 240.15d–14(f) of this chapter), a small business investment company registered on Form N–5 (§§ 239.24 and 274.5 of this chapter), or a unit investment trust as defined in section 4(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–4(2)), must maintain disclosure controls and procedures (as defined in paragraph (c) of this section).

* * * * *

(c) For purposes of this section, the term *disclosure controls and procedures* means controls and other procedures of an issuer that are designed to ensure that information required to be disclosed by the issuer in the reports that it files or submits under the Act (15 U.S.C. 78a *et seq.*) is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by an issuer in the reports that it files or submits under the Act is accumulated and communicated to the issuer's management, including its principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

11. The authority citation for Part 249 is amended by revising the authority citations for ''Section 249.220f,'' ''Section 249.240f'' and ''Section 249.331'' to read as follows:

Authority: 15 U.S.C. 78a *et seq.*, unless otherwise noted.

* * * * *

Section 249.220f is also issued under secs. 3(a), 302, 404, 407 and 906, Pub. L. 107–204, 116 Stat. 745.

Section 249.240f is also issued under secs. 3(a), 302, 404, 407 and 906, Pub. L. 107–204, 116 Stat. 745.

Section 249.331 is also issued under secs. 3(a), 202, 208, 302, 406, 407 and 906, Pub. L. 107–204, 116 Stat. 745

12. By amending Form 10–Q (referenced in § 249.308a) by removing the last sentence of General Instruction

G and by removing the ''Certifications'' section after the ''Signatures'' section.

Note: The text of Form 10–Q does not, and this amendment will not, appear in the Code of Federal Regulations.

13. By amending Form 10–QSB (referenced in § 249.308b) by removing the last sentence of paragraph 2 of General Instruction F and by removing the ''Certifications'' section after the ''Signatures'' section.

Note: The text of Form 10–QSB does not, and this amendment will not, appear in the Code of Federal Regulations.

14. By amending Form 10–K (referenced in § 249.310) by removing the phrase ''(who also must provide the certification required by Rule 13a–14 (17 CFR 240.13a–14) or Rule 15d–14 (17 CFR 240.15d–14) exactly as specified in this form)'' wherever it appears in the first sentence of paragraph (2)(a) of General Instruction D. and by removing the ''Certifications'' section after the ''Signatures'' section and before the reference to ''Supplemental Information to be Furnished With Reports Filed Pursuant to Section 15(d) of the Act by Registrants Which Have Not Registered Securities Pursuant to Section 12 of the Act.''

Note: The text of Form 10–K does not, and this amendment will not, appear in the Code of Federal Regulations.

15. By amending Form 10–KSB (referenced in § 249.310b) by removing the phrase ''(who also must provide the certification required by Rule 13a–14 (17 CFR 240.13a–14) or Rule 15d–14 (17 CFR 240.15d–14) exactly as specified in this form)'' wherever it appears in the first sentence of paragraph 2 of General Instruction C. and by removing the ''Certifications'' section after the ''Signatures'' section and before the reference to ''Supplemental Information to be Furnished With Reports Filed Pursuant to Section 15(d) of the Exchange Act By Non-reporting Issuers.''

Note: The text of Form 10–KSB does not, and this amendment will not, appear in the Code of Federal Regulations.

16. By amending Form 20–F (referenced in § 249.220f) by:

a. Revising paragraph (e) to General Instruction B;

b. Removing the ''Certifications'' section after the ''Signatures'' section and before the section referencing ''Instructions as to Exhibits''; and

c. In the ''Instruction as to Exhibits'' section, redesignate paragraph 12 as paragraph 14 and add new paragraph 12 and paragraph 13.

The revisions and additions read as follows.

Note: The text of Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 20–F

* * * * *

General Instructions

* * * * *

B. General Rules and Regulations That Apply to this Form.

* * * * *

(e) Where the Form is being used as an annual report filed under Section 13(a) or 15(d) of the Exchange Act, provide the certifications required by Rule 13a–14 (17 CFR 240.13a–14) or Rule 15d–14 (17 CFR 240.15d–14).

* * * * *

Instructions as to Exhibits

* * * * *

12. The certifications required by Rule 13a–14(a) (17 CFR 240.13a–14(a)) or Rule 15d–14(a) (17 CFR 240.15d–14(a)) exactly as set forth below:

Certifications*

I, [identify the certifying individual], certify that:

1. I have reviewed this annual report on Form 20–F of [identify registrant];

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a–15 and 15d–15) for the registrant and have:

(a) Designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this report (the ''Evaluation Date''); and

(c) Presented in this report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officers and I have indicated in this report whether there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: _____

_____

[Signature]

[Title]

*Provide a separate certification for each principal executive officer and principal financial officer of the registrant. *See* Rules 13a–14 and 15d–14.

13. (a) The certifications required by Rule 13a–14(b) (17 CFR 240.13a–14(b)) or Rule 15d–14(b) (17 CFR 240.15d–14(b)) and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. 1350).

(b) A certification furnished pursuant to this item will not be deemed ''filed'' for purposes of Section 18 of the Exchange Act [15 U.S.C. 78r], or otherwise subject to the liability of that section. Such certification will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

* * * * *

17. By amending Form 40–F (referenced in § 249.240f) by:

a. Revising paragraph (6) to General Instruction B; and

b. Removing the ''Certifications'' section after the ''Signatures'' section.

The revisions read as follows.

Note: The text of Form 40–F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 40–F

* * * * *

General Instructions

* * * * *

B. Information To Be Filed on This Form

* * * * *

(6) Where the Form is being used as an annual report filed under Section 13(a) or 15(d) of the Exchange Act:

(a)(1) Provide the certifications required by Rule 13a–14(a) (17 CFR 240.13a–14(a)) or Rule 15d–14(a) (17 CFR 240.15d–14(a)) as an exhibit to this report exactly as set forth below.

Certifications*

I, [identify the certifying individual], certify that:

1. I have reviewed this annual report on Form 40–F of [identify registrant];

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a–15 and 15d–15) for the registrant and have:

(a) Designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this report (the ''Evaluation Date''); and

(c) Presented in this report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officers and I have indicated in this report whether there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: _____

[Signature]

[Title]

* Provide a separate certification for each principal executive officer and principal financial officer of the registrant. *See* Rules 13a–14(a) and 15d–14(a).

(2)(i) Provide the certifications required by Rule 13a–14(b) (17 CFR 240.13a–14(b)) or Rule 15d–14(b) (17 CFR 240.15d–14(b)) and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. 1350).

(ii) A certification furnished pursuant to this item will not be deemed ''filed'' for purposes of Section 18 of the Exchange Act [15 U.S.C. 78r], or otherwise subject to the liability of that section. Such certification will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

18. The authority citation for Part 270 is amended by revising the authority citation for ''Section 270.30a–2'' to read as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, and 80a–39, unless otherwise noted.

* * * * *

Section 270.30a–2 is also issued under 15 U.S.C. 78m, 78o(d), 80a–8, and 80a–29, and secs. 3(a), 302, and 906, Pub. L. 107–204, 116 Stat. 745.

* * * * *

19. By revising the last sentence of § 270.8b–15 to read as follows:

§ 270.8b–15 Amendments.

* * * An amendment to any report required to include the certifications as specified in § 270.30a–2(a) must include new certifications by each principal executive officer and principal financial officer of the registrant, and an amendment to any report required to be accompanied by the certifications as specified in § 270.30a–2(b) must be accompanied by new certifications by each chief executive officer and chief financial officer of the registrant.

20. Section 270.30a–2 is revised to read as follows:

§ 270.30a–2 Certification of Form N–CSR.

(a) Each report filed on Form N–CSR (§§ 249.331 and 274.128 of this chapter) by a registered management investment company must include certifications in the form specified in Item 10(a)(2) of Form N–CSR and filed as an exhibit to such report. Each principal executive officer or officers and principal financial officer or officers of the investment company, or persons performing similar functions, at the time of filing of the report must sign a certification.

(b) Each report on Form N–CSR filed by a registered management investment company under Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a); 15 U.S.C. 78o(d)) and that contains financial statements must be accompanied by certifications in the form specified in Item 10(b) of Form N–CSR and furnished as an exhibit to such report. Each chief executive officer and chief financial officer of the investment company (or equivalent thereof) must sign a certification. This requirement may be satisfied by a single certification signed by an investment company's chief executive officer and chief financial officer.

(c) A person required to provide a certification specified in paragraph (a) or (b) of this section may not have the certification signed on his or her behalf pursuant to a power of attorney or other form of confirming authority.

21. By amending § 270.30a–3 by:

a. Revising paragraph (a); and

b. Adding paragraph (c).

The revisions and additions read as follows.

§ 270.30a–3 Disclosure controls and procedures related to preparation of required filings.

(a) Every registered management investment company, other than a small

business investment company registered on Form N–5 (§§ 239.24 and 274.5 of this chapter), must maintain disclosure controls and procedures (as defined in paragraph (c) of this section).

* * * * *

(c) For purposes of this section, the term *disclosure controls and procedures* means controls and other procedures of a registered management investment company that are designed to ensure that information required to be disclosed by the investment company on Form N–CSR (§§ 249.331 and 274.128 of this chapter) is recorded, processed, summarized, and reported within the time periods specified in the Commission's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by an investment company in the reports that it files or submits on Form N–CSR is accumulated and communicated to the investment company's management, including its principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

22. The authority citation for Part 274 is amended by revising the authority citation for ''Section 274.128'' to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

* * * * *

Section 274.128 is also issued under secs. 3(a), 202, 208, 302, 406, 407, and 906, Pub. L. No. 107–204, 116 Stat. 745.

23. Form N–CSR (referenced in §§ 249.331 and 274.128) is amended by:

a. In General Instruction D, revising the reference ''Item 10(a)'' to read ''Item 10(a)(1)'';

b. Revising paragraph 2.(a) of General Instruction F;

c. In paragraph (c) of Item 2, revising the reference ''Item 10(a)'' to read ''Item 10(a)(1)'';

d. In paragraph (f)(1) of Item 2, revising the reference ''Item 10(a)'' to read ''Item 10(a)(1)'';

e. In paragraph (a) of Item 9, revising the reference ''Rule 30a–2(c) under the Act (17 CFR 270.30a–2(c))'' to read ''Rule 30a–3(c) under the Act (17 CFR 270.30a–3(c))'';

f. In Item 10:

(i) The introductory text, paragraphs (a) and (b) are redesignated as paragraphs (a), (a)(1) and (a)(2), respectively;

(ii) Revising newly redesignated paragraph (a) and the introductory text of newly redesignated paragraph (a)(2); and

(iii) Adding new paragraph (b) and an Instruction to Item 10; and

g. In paragraph 4 of the ''Certifications'' section in newly redesignated paragraph (a)(2) of Item 10, revising the reference ''Rule 30a–2(c) under the Investment Company Act of 1940'' to read ''Rule 30a–3(c) under the Investment Company Act of 1940''.

The revisions and additions read as follows.

Note: The text of Form N–CSR does not, and these amendments will not, appear in the Code of Federal Regulations.

Form N–CSR

* * * * *

General Instructions

* * * * *

F. Signature and Filing of Report.

* * * * *

2.(a) The report must be signed by the registrant, and on behalf of the registrant by its principal executive officer or officers and its principal financial officer or officers.

* * * * *

Item 10. Exhibits

(a) File the exhibits listed below as part of this Form.

* * * * *

(a)(2) A separate certification for each principal executive officer and principal financial officer of the registrant as required by rule 30a–2(a) under the Act (17 CFR 270.30a–2(a)), exactly as set forth below:

* * * * *

(b) If the report is filed under Section 13(a) or 15(d) of the Exchange Act, provide the certifications required by rule 30a–2(b) under the Act (17 CFR 270.30a–2(b)) and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. 1350) as an exhibit. A certification furnished pursuant to this paragraph will not be deemed ''filed'' for purposes of Section 18 of the Exchange Act (15 U.S.C. 78r), or otherwise subject to the liability of that section. Such certification will not be deemed to be incorporated by reference into any filing under the Securities Act of 1933 or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

Instruction to Item 10

Letter or number the exhibits in the sequence that they appear in this item.

* * * * *

By the Commission.

Dated: March 21, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–7310 Filed 3–28–03; 8:45 am]

BILLING CODE 8010–01–P

Federal Register

Monday,
March 31, 2003

Part IV

Department of Defense

48 CFR Parts 206, et al.

Defense Federal Acquisition Regulation Supplement; Foreign Acquisition; Final Rule

DEPARTMENT OF DEFENSE

48 CFR Parts 206, 208, 212, 225, 242, and 252

[DFARS Case 2002–D009]

Defense Federal Acquisition Regulation Supplement; Foreign Acquisition

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to simplify and clarify policy pertaining to the acquisition of supplies and services from foreign sources.

EFFECTIVE DATE: April 30, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0328; facsimile (703) 602–0350. Please cite DFARS Case 2002–D009.

SUPPLEMENTARY INFORMATION:

A. Background

This rule revises DFARS Part 225, Foreign Acquisition, and associated provisions and clauses. The rule—

- Provides streamlined procedures for evaluating foreign offers when acquiring supplies, and adds procedures for evaluating foreign offers in acquisitions in which price is not the determining factor.
- Changes the definition of ''qualifying country end product'' to permit the qualifying country manufacturing the product to use components from any other qualifying country.
- Lowers the required approval levels for determinations of nonavailability under the Buy American Act.
- Lowers the required approval levels for individual public interest determinations for acquisition of end products from qualifying countries.
- Provides that the Government will evaluate duty only if it is to be paid. Except for qualifying country supplies or eligible end products, the contractor will request duty-free entry only on foreign supplies for which the contractor estimates that duty will exceed $200 per shipment into the customs territory of the United States. One duty-free entry clause replaces five existing clauses.
- Eliminates the requirement for a contractor to represent that it will comply with all laws, decrees, labor standards, and regulations of the foreign country in which the contract will be performed.
- Deletes obsolete text and clauses relating to outdated appropriations act restrictions, resulting in the elimination of four clauses.

DoD published a proposed rule in the **Federal Register** at 67 FR 62590 on October 7, 2002. Five sources submitted comments on the proposed rule. Most respondents generally favored the rule, with minor technical suggestions. Differences between the proposed and final rules are addressed below in the discussion of comments 8, 9, 10, 13, 14, 16, and 17.

1. *Comment:* One respondent supported the change in the definition of ''qualifying country end product'' which permits the qualifying country manufacturing the product to use components of another qualifying country, stating that ''This change recognizes the multi-national realities of many manufacturing and assembly operations * * *''.

DoD Response: Concur.

2. *Comment:* One respondent suggested that 225.003, Definitions, also incorporate by reference the definitions found at 252.225–7021(a), particularly the definitions for ''designated country,'' ''designated country end product,'' and ''U.S.-made end product.''

DoD Response: Do not concur. These definitions are in the FAR at 25.003. The DFARS supplements the FAR, must be read in conjunction with the FAR, and does not repeat FAR text.

3. *Comment:* One respondent objected to ''the expanded'' definition of ''domestic end product'' (252.225–7001 and 252.225–7036) and the two-part test at 225.101, which flows from this definition. The respondent stated that the rule has the potential to allow a manufactured end product that is 100 percent manufactured in a qualifying country to be determined a domestic end product.

DoD Response: Do not concur. This rule makes no substantive change to the definition of ''domestic end product.'' As required by the Buy American Act, a domestic end product must be mined, produced, or manufactured in the United States. With regard to components, the rule requires that the cost of the qualifying country components and the components that are mined, produced, or manufactured in the United States exceed 50 percent of the cost of all components. This rule implements long-standing DoD policy, based on Memoranda of Understanding with DoD's allies, and does not represent a change from the current regulations.

4. *Comment:* One respondent recommended keeping the definition of ''nondesignated country end product'' in 225.003.

DoD Response: Do not concur. This definition is unnecessary, because the term is no longer used in Part 225.

5. *Comment:* One respondent supported lowering of the approval levels for domestic nonavailability and public interest determinations, because this takes into account the increasingly global nature of manufacturing operations and addresses the short-supply or nonavailability situations that can result when production moves offshore.

DoD Response: Concur.

6. *Comment:* One respondent objected to the change at 225.103(a)(ii)(A)*(3)(i)* from ''American good'' to ''domestic end product.''

DoD Response: Do not concur. The rule replaces the term ''American good'' with ''domestic end product'' for consistency with the terminology used elsewhere in Part 225 and associated clauses. The change in terminology does not substantially change the meaning of the DFARS text.

7. *Comment:* One respondent objected to the replacement of ''original manufacturer'' with ''original foreign manufacturer'' at 225.103(b)(iii)(B), as it changes the focus.

DoD Response: Do not concur. DFARS 225.103(b)(iii)(B) relates to a DoD determination that certain articles are not reasonably available from domestic sources because they are spare or replacement parts that must be acquired from the original manufacturer. If the original manufacturer were domestic, the spare or replacement parts could be obtained from a domestic source and no exception would be required.

8. *Comment:* One respondent recommended clarifying that a determination and findings is not required for the items listed in 225.103(b)(iii)(A)–(C).

DoD Response: Concur. DoD has changed DFARS 225.103(b)(iii) to clarify that no separate determination is required for these items.

9. *Comment:* One respondent asked whether the references to ''$100K'' in 225.103 should be changed to the ''simplified acquisition threshold.''

DoD Response: Concur. Approval thresholds of $100,000 that appeared in the proposed rule have been changed to the ''simplified acquisition threshold'' at 225.103(a)(ii)(B), 225.103(b)(ii), and 225.872–4(b). The circumstances in which the simplified acquisition threshold is greater than $100,000 would also justify an increased

threshold for approval for these determinations.

10. *Comment:* One respondent suggested reinstating the text at 225.170 to apply the Part 225 evaluation procedures to foreign items on Federal Supply Schedules.

DoD Response: Concur. DoD has reinstated this text in the final rule.

11. *Comment:* One respondent noted that DFARS specifically identifies the inapplicability of qualifying country offers on small business set-asides (225.872–3). The respondent recommended addition of similar coverage regarding designated country offers or NAFTA offers in Subpart 225.4, Trade Agreements.

DoD Response: Do not concur. The FAR addresses this issue at 25.401(a)(1).

12. *Comment:* One respondent objected that the evaluation procedures—

a. Are still convoluted and confusing;

b. Summarily perpetuate the notion that qualifying country end products are exempt from application of the Buy American Act or Balance of Payments Program;

c. Eliminate the requirement for ''two tests that must be met to determine whether a manufactured item is a domestic end product''; and

d. May result in a regulatory pre-determination that a foreign offer that is lower than the lowest domestic offer may be exempt from the Buy American Act and the Balance of Payments Program simply because the regulation says so.

DoD Response: a. Do not concur. Due to the complexity of the laws involved, the evaluation procedures cannot be simplified further. The rule lays out step-by-step procedures, parallel to the FAR, which will lead to the correct conclusion. The rule eliminates many confusing aspects of the current regulation: It no longer requires treatment of offers of eligible end products as if they were qualifying country offers; no longer requires evaluation of duty unless duty is to be paid; and no longer requires application of an evaluation factor to offers that are already known to be unacceptable. In addition, DoD is preparing an on-line training module to provide additional explanatory material and practical examples to clarify the main issues.

b. Concur. The rule does exempt qualifying country end products from application of the Buy American Act or the Balance of Payments Program. This exemption represents long-standing DoD policy implementing Memoranda of Understanding with qualifying countries, whereby DoD has reciprocal procurement agreements of non-discrimination.

c. Do not concur. The ''two tests'' previously at 225.502(c)(v)(A) have been moved to 225.101.

d. Do not concur. The determination that a foreign product may be exempt from the Buy American Act and the Balance of Payments Program is not simply because the regulations say so, but because following these evaluation procedures results in correct implementation of the exceptions to the Buy American Act provided in the Buy American Act itself, and further amplified in Executive Order 10582, and determinations of the Secretary of Defense that are in accordance with the Act and the Executive order.

13. *Comment:* One respondent indicated that the phrase ''products of the following qualifying countries'' at 225.872–1(b) is not sufficiently precise and should take into consideration whether the end product is manufactured in the originating country.

DoD Response: Partially concur. DoD has clarified the text at 225.872–1(a) and (b) by using the term ''qualifying country end products.''

14. *Comment:* One respondent did not find the $200 ''per unit'' reference with regard to duty to be clear.

DoD Response: Concur. DoD has revised DFARS 225.901(3) and the associated clause at 252.225–7013, to change ''$200 per unit (end product or component)'' to ''$200 per shipment into the customs territory of the United States.'' Duty-free entry certificates are issued on a per shipment basis. Therefore, the determination of the threshold at which it is economically worthwhile to issue such certificates should be on a per shipment basis.

Furthermore, DoD has changed the prescription at 225.1101(4) for use of the Duty-Free Entry clause at 252.225–7013, to base its use on whether the supplies will enter the customs territory of the United States, rather than whether the supplies are for exclusive use outside the United States.

15. *Comment:* One respondent was concerned that there are no specific criteria at 225.7003 for determining if a foreign country discriminates against defense items produced in the United States to a greater degree than the United States discriminates against items produced in that country. The respondent stated that ''semantics and unsubstantiated allegations of discrimination could be used as a basis for waiving compliance with the Buy American Act * * *''

DoD Response: Do not concur. This rule makes no substantive change to the DFARS text on this subject. This waiver condition comes directly from 10 U.S.C. 2534(d)(2). Since the Under Secretary of Defense (Acquisition, Technology, and Logistics) exercises this authority without power of delegation, it is not necessary to include the determination criteria in the DFARS.

16. *Comment:* One respondent supported the changes proposed under DFARS Case 2002–D008, Trade Agreements Act—Exception for U.S.-Made End Product, that were also included in this rule. Another respondent objected to the changes on the basis that they could create a *de facto* blanket exception to the Buy American Act for all end products that are substantially transformed in the United States.

DoD Response: These comments are outside the scope of this case. Comments on this issue were requested under DFARS Case 2002–D008, for which a final rule was issued on December 20, 2002. However, DoD notes that the exception for U.S.-made end products was based on a determination by the Under Secretary of Defense (Acquisition, Technology, and Logistics) that it was not in the public interest to continue to apply the Buy American Act only to U.S.-made end products in acquisitions subject to the Trade Agreements Act, because the Buy American Act has already been waived for the competing eligible products from countries other than the United States.

This final rule deletes DFARS 225.502(c)(i)(C) to conform to the changes made under DFARS Case 2002–D008.

17. *Comment:* DoD received internal Government comments recommending that the text at 209.104–1, 209.104–70, 209.405–2, 209.409, and the associated clauses at 252.209, not be moved to Part 225 and associated clauses.

DoD Response: Concur. This text has been retained at its present location.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most of the changes in the rule merely simplify and clarify existing policy and procedures. Other changes, such as the revised definition of ''qualifying country end product'' primarily affect foreign firms, which, by definition, do not qualify as small entities within the meaning of the

Regulatory Flexibility Act. The changes in procedures for evaluation of duty will result in a paperwork burden reduction for both large and small businesses, but the economic impact will not be significant.

C. Paperwork Reduction Act

This rule does not impose any new information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* The information collection requirements in the rule are currently approved by the Office of Management and Budget under Control Number 0704–0187. Elimination of the provision at 252.225–7003, Information for Duty-Free Entry Evaluation, will result in a reduction of 21,451 hours in estimated annual burden.

List of Subjects in 48 CFR Parts 206, 208, 212, 225, 242, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR Parts 206, 208, 212, 225, 242, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 206, 208, 212, 225, 242, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 206—COMPETITION REQUIREMENTS

■ 2. Section 206.303–1 is amended by adding paragraph (d) to read as follows:

206.303–1 Requirements.

* * * * *

(d) The Director of Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics), is the agency point of contact for submission of justifications to the Office of the United States Trade Representative.

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

3. Section 208.7203 is amended by revising paragraph (c) to read as follows:

208.7203 Authority.

* * * * *

(c) Acquisition of items restricted under 225.7005 and Subpart 225.71.

* * * * *

PART 212—ACQUISITION OF COMMERCIAL ITEMS 212.301 [Amended]

■ 4. Section 212.301 is amended by removing paragraph (f)(vi) and redesignating paragraph (f)(vii) as paragraph (f)(vi).

PART 225—FOREIGN ACQUISITION

■ 5. Sections 225.000, 225.001, and 225.003 are revised to read as follows:

225.000 Scope of part.

This part also provides policy and procedures for—

(1) Purchasing foreign defense supplies, services, and construction materials with special procedures for—

(i) Contracting with Canadian and other qualifying country sources; and

(ii) Cooperative projects;

(2) Implementing statutory and policy restrictions on foreign acquisition;

(3) Reporting contract performance outside the United States;

(4) Foreign military sales acquisitions; and

(5) Antiterrorism/force protection for defense contractors outside the United States.

225.001 General.

When evaluating offers of foreign end products, consider the following:

(1) *Statutory or policy restrictions.*

(i) Determine whether the product is restricted by—

(A) Statute (see Subpart 225.70); or

(B) DoD policy (see Subpart 225.71 and FAR 6.302–3).

(ii) If an exception to or waiver of a restriction in Subpart 225.70 or 225.71 would result in award of a foreign end product, apply the policies and procedures of the Buy American Act or the Balance of Payments Program, and, if applicable, the trade agreements.

(2) *Memoranda of understanding or other international agreements.* Determine whether the offered product is the product of one of the qualifying countries listed in 225.872–1.

(3) *Trade agreements.* If the product is not an eligible product, a qualifying country end product, or a U.S.-made end product, purchase of the foreign end product may be prohibited (see FAR 25.403(c) and 225.403(c)).

(4) *Other trade sanctions and prohibited sources.*

(i) Determine whether the offeror complies with the secondary Arab boycott of Israel. Award to such offerors may be prohibited (see 225.670).

(ii) Determine whether the offeror is a prohibited source (see Subpart 225.7).

(5) *Buy American Act and Balance of Payments Program.* See the evaluation procedures in Subpart 225.5.

225.003 Definitions.

As used in this part—

(1) *Caribbean Basin country end product* includes petroleum or any product derived from petroleum.

(2) *Defense equipment* means any equipment, item of supply, component, or end product purchased by DoD.

(3) *Domestic concern* means—

(i) A concern incorporated in the United States (including a subsidiary that is incorporated in the United States, even if the parent corporation is a foreign concern; or

(ii) An unincorporated concern having its principal place of business in the United States.

(4) *Domestic end product* has the meaning given in the clauses at 252.225–7001, Buy American Act and Balance of Payments Program; and 252.225–7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program, instead of the meaning in FAR 25.003.

(5) *Eligible product* means, instead of the definition in FAR 25.003, a designated, NAFTA, or Caribbean Basin country end product in the categories listed in 225.401–70.

(6) *Foreign concern* means any concern other than a domestic concern.

(7) *Nonqualifying country* means a country other than the United States or a qualifying country.

(8) *Nonqualifying country component* means a component mined, produced, or manufactured in a nonqualifying country.

(9) *Qualifying country* means a country with a memorandum of understanding or international agreement with the United States. Qualifying countries are listed in 225.872–1.

(10) *Qualifying country component* and *qualifying country end product* are defined in the clauses at 252.225–7001, Buy American Act and Balance of Payments Program; and 252.225–7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program. *Qualifying country end product* is also defined in the clause at 252.225–7021, Trade Agreements.

(11) *Qualifying country offer* means an offer of a qualifying country end product, including the price of transportation to destination.

(12) *Source,* when restricted by words such as foreign, domestic, or qualifying country, means the actual manufacturer or producer of the end product or component.

■ 6. Subpart 225.1 is revised to read as follows:

Subpart 225.1—Buy American Act—Supplies

Sec.
225.101 General.
225.103 Exceptions.
225.104 Nonavailable articles.
225.105 Determining reasonableness of cost.
225.170 Acquisition from or through other Government agencies.
225.171 Solicitations.

225.101 General.

(a) For DoD, the following two-part test determines whether a manufactured end product is a domestic end product:

(i) The end product is manufactured in the United States; and

(ii) The cost of its U.S. and qualifying country components exceeds 50 percent of the cost of all its components. This test is applied to end products only and not to individual components.

(c) Additional exceptions that allow the purchase of foreign end products are listed at 225.103.

225.103 Exceptions.

(a)(i)(A) Public interest exceptions for certain countries are in 225.872.

(B) For procurements subject to the Trade Agreements Act, the Under Secretary of Defense (Acquisition, Technology, and Logistics) has determined that it is inconsistent with the public interest to apply the Buy American Act to end products that are substantially transformed in the United States.

(ii)(A) Normally, use the evaluation procedures in Subpart 225.5, but consider recommending a public interest exception if the purposes of the Buy American Act are not served, or in order to meet a need set forth in 10 U.S.C. 2533. For example, a public interest exception may be appropriate—

(1) If accepting the low domestic offer will involve substantial foreign expenditures, or accepting the low foreign offer will involve substantial domestic expenditures;

(2) To ensure access to advanced state-of-the-art commercial technology; or

(3) To maintain the same source of supply for spare and replacement parts (also see paragraph (b)(iii)(B) of this section)—

(i) For an end item that qualifies as a domestic end product; or

(ii) In order not to impair integration of the military and commercial industrial base.

(B) Except as provided in 225.872–4(b), process a determination for a public interest exception after consideration of the factors in 10 U.S.C. 2533—

(1) At a level above the contracting officer for acquisitions valued at or below the simplified acquisition threshold;

(2) By the head of the contracting activity for acquisitions with a value greater than the simplified acquisition threshold but less than $1,000,000; or

(3) By the agency head for acquisitions valued at $1,000,000 or more.

(b)(i) A determination that an article, material, or supply is not reasonably available is required when domestic offers are insufficient to meet the requirement and award is to be made on other than a qualifying country or eligible end product.

(ii) Except as provided in FAR 25.103(b)(3), the determination shall be approved—

(A) At a level above the contracting officer for acquisitions valued at or below the simplified acquisition threshold;

(B) By the chief of the contracting office for acquisitions with a value greater than the simplified acquisition threshold but less than $1,000,000; or

(C) By the head of the contracting activity or immediate deputy for acquisitions valued at $1,000,000 or more.

(iii) A separate determination as to whether an article is reasonably available is not required for the following articles. DoD has already determined that these articles are not reasonably available from domestic sources:

(A) End products or components listed in 225.104(a).

(B) Spare or replacement parts that must be acquired from the original foreign manufacturer or supplier.

(C) Foreign drugs acquired by the Defense Supply Center, Philadelphia, when the Director, Pharmaceuticals Group, Directorate of Medical Materiel, determines that only the requested foreign drug will fulfill the requirements.

(iv) Under coordinated acquisition (see Subpart 208.70), the determination is the responsibility of the requiring department when the requiring department specifies acquisition of a foreign end product.

(c) The cost of a domestic end product is unreasonable if it is not the low evaluated offer when evaluated under Subpart 225.5.

225.104 Nonavailable articles.

(a) DoD has determined that the following articles also are nonavailable in accordance with FAR 25.103(b):

(i) Aluminum clad steel wire.

(ii) Sperm oil.

225.105 Determining reasonableness of cost.

(b) Use an evaluation factor of 50 percent instead of the factors specified in FAR 25.105(b).

225.170 Acquisition from or through other Government agencies.

Contracting activities must apply the evaluation procedures in Subpart 225.5 when using Federal supply schedules.

225.171 Solicitations.

For oral solicitations, inform prospective quoters that only domestic and qualifying country end products are acceptable unless—

(1) Other foreign end products are excepted either on a blanket or an individual basis; or

(2) The price of another foreign end product is the low offer under the evaluation procedures in Subpart 225.5.

225.202 [Amended]

■ 7. Section 225.202 is amended in paragraph (a)(2) as follows:

■ a. In the first sentence, by removing the parenthetical ''(iii)''; and

■ b. In the second sentence, by removing ''must'' and adding in its place ''shall''.

■ 8. Section 225.401 is revised to read as follows:

225.401 Exceptions.

(a)(2) If a department or agency considers an individual acquisition of a product to be indispensable for national security or national defense purposes and appropriate for exclusion from the provisions of FAR Subpart 25.4, it may submit a request with supporting rationale to the Director of Defense Procurement and Acquisition Policy (OUSD(AT&L)DPAP). Approval by OUSD(AT&L)DPAP is not required if—

(A) Purchase from foreign sources is restricted by statute (see Subpart 225.70);

(B) Another exception in FAR 25.401 applies to the acquisition; or

(C) Competition from foreign sources is restricted under Subpart 225.71.

■ 9. Section 225.401–70 is amended in the introductory text by revising the last sentence to read as follows:

225.401–70 Products subject to trade agreement acts.

* * * The following list indicates those products that are eligible for designated and NAFTA countries, but are not eligible for Caribbean Basin countries.

* * * * *

■ 10. Section 225.403 is revised to read as follows:

225.403 Trade Agreements Act.

(c) For acquisitions subject to the Trade Agreements Act, acquire only U.S.-made, qualifying country, or eligible end products unless—

(i) The contracting officer determines that offers of U.S.-made, qualifying country, or eligible products from responsive, responsible offerors are either—

(A) Not received; or

(B) Insufficient to fill the Government's requirements. In this case, accept all responsive, responsible offers of U.S.-made, qualifying country, and eligible products before accepting any other offers; or

(ii) A national interest waiver under 19 U.S.C. 2512(b)(2) is granted on a case-by-case basis. Except as delegated in paragraphs (c)(i)(A) and (B) of this section, submit any request for a national interest waiver to the Director of Defense Procurement and Acquisition Policy in accordance with department or agency procedures. Include supporting rationale with the request.

(A) The head of the contracting activity may approve a national interest waiver for a purchase by an overseas purchasing activity, if the waiver is supported by a written statement from the requiring activity that the products being acquired are critical for the support of U.S. forces stationed abroad.

(B) The Commander or Director, Defense Energy Support Center, may approve national interest waivers for purchases of fuel for use by U.S. forces overseas.

■ 11. Subpart 225.5 is revised to read as follows:

Subpart 225.5—Evaluating Foreign Offers—Supply Contracts

Sec.
225.502 Application.
225.503 Group offers.
225.504 Evaluation examples.

225.502 Application.

(b) Use the following procedures instead of the procedures in FAR 25.502(b) for acquisitions subject to the Trade Agreements Act:

(i) Consider only offers of U.S.-made, qualifying country, or eligible end products, except as permitted by 225.403.

(ii) If price is the determining factor, award on the low offer.

(c) Use the following procedures instead of those in FAR 25.502(c) for acquisitions subject to the Buy American Act or the Balance of Payments Program:

(i)(A) If the acquisition is subject only to the Buy American Act or the Balance of Payments Program, then only qualifying country end products are exempt from application of the Buy American Act or Balance of Payments Program evaluation factor.

(B) If the acquisition is also subject to NAFTA, then NAFTA country end products are also exempt from application of the Buy American Act or Balance of Payments Program evaluation factor.

(ii) If price is the determining factor, use the following procedures:

(A) If the low offer is a domestic offer, award on that offer.

(B) If there are no domestic offers, award on the low offer (see example in 225.504(1)).

(C) If the low offer is a foreign offer that is exempt from application of the Buy American Act or Balance of Payments Program evaluation factor, award on that offer. (If the low offer is a qualifying country offer from a country listed at 225.872–1(b) and the Trade Agreements Act does not apply, execute a determination in accordance with 225.872–4).

(D) If the low offer is a foreign offer that is not exempt from application of the Buy American Act or Balance of Payments Program evaluation factor, and there is another foreign offer that is exempt and is lower than the lowest domestic offer, award on the low foreign offer (see example in 225.504(2)).

(E) Otherwise, apply the 50 percent evaluation factor to the low foreign offer.

(1) If the price of the low domestic offer is less than the evaluated price of the low foreign offer, award on the low domestic offer (see example in 225.504(3)).

(2) If the evaluated price of the low foreign offer remains less than the low domestic offer, award on the low foreign offer (see example in 225.504(4)).

(iii) If price is not the determining factor, use the following procedures:

(A) If there are domestic offers, apply the 50 percent Buy American Act or Balance of Payments Program evaluation factor to all foreign offers unless an exemption applies.

(B) Evaluate in accordance with the criteria of the solicitation.

(C) If these procedures will not result in award on a domestic offer, reevaluate offers without the 50 percent factor. If this will result in award on an offer to which the Buy American Act or Balance of Payments Program applies, but evaluation in accordance with paragraph (c)(ii) of this section would result in award on a domestic offer, proceed with award only after execution of a determination in accordance with 225.103(a)(ii)(B), that domestic preference would be inconsistent with the public interest.

225.503 Group offers.

Evaluate group offers in accordance with FAR 25.503, but apply the evaluation procedures of 225.502.

225.504 Evaluation examples.

The following examples illustrate the evaluation procedures in 225.502(c)(ii). The examples assume that the contracting officer has eliminated all offers that are unacceptable for reasons other than price or a trade agreement and that price is the determining factor in contract award. The same evaluation procedures and the 50 percent evaluation factor apply regardless of whether the acquisition is subject to the Buy American Act (BAA) or the Balance of Payments Program (BOPP).

(1) Example 1.

Offer A $945,000—Foreign offer subject to BAA/BOPP
Offer B $950,000—Foreign offer exempt from BAA/BOPP
Since no domestic offers are received, do not apply the evaluation factor. Award on Offer A.

(2) Example 2.

Offer A $950,000—Domestic offer
Offer B $890,000—Foreign offer exempt from BAA/BOPP
Offer C $880,000—Foreign offer subject to BAA/BOPP
Since the exempt foreign offer is lower than the domestic offer, do not apply the evaluation factor. Award on Offer C.

(3) Example 3.

Offer A $9,100—Foreign offer exempt from BAA/BOPP
Offer B $8,900—Domestic offer
Offer C $6,000—Foreign offer subject to BAA/BOPP
Since the domestic offer is lower than the exempt foreign offer, apply the 50 percent evaluation factor to Offer C. This results in an evaluated price of $9,000 for Offer C. Award on Offer B.

(4) Example 4.

Offer A $910,000—Foreign offer exempt from BAA/BOPP
Offer B $890,000—Domestic offer
Offer C $590,000—Foreign offer subject to BAA/BOPP
Since the domestic offer is lower than the exempt foreign offer, apply the 50 percent evaluation factor to Offer C. This results in an evaluated price of $885,000 for Offer C. Award on Offer C.

■ 12. Subpart 225.6 is added to read as follows:

Subpart 225.6—Trade Sanctions

Sec.
225.670 Secondary Arab boycott of Israel.
225.670–1 Restriction.
225.670–2 Procedures.
225.670–3 Exceptions.
225.670–4 Waivers.

225.670 Secondary Arab boycott of Israel.

225.670–1 Restriction.

In accordance with 10 U.S.C. 2410i, do not enter into a contract with a foreign entity unless it has certified that it does not comply with the secondary Arab boycott of Israel.

225.670–2 Procedures.

For contracts awarded to the Canadian Commercial Corporation (CCC), the CCC will submit a certification from its proposed subcontractor with the other required precontractual information (see 225.870).

225.670–3 Exceptions.

This restriction does not apply to—

(a) Purchases at or below the simplified acquisition threshold;

(b) Contracts for consumable supplies, provisions, or services for the support of United States forces or of allied forces in a foreign country; or

(c) Contracts pertaining to the use of any equipment, technology, data, or services for intelligence or classified purposes, or to the acquisition or lease thereof, in the interest of national security.

225.670–4 Waivers.

The Secretary of Defense may waive this restriction on the basis of national security interests. Forward waiver requests to the Director, Defense Procurement and Acquisition Policy, Attn: OUSD(AT&L)DPAP(PAIC), 3060 Defense Pentagon, Washington, DC 20301–3060.

225.701 [Amended]

■ 13. Section 225.701 is amended by removing the second sentence.

225.770 through 225.771–5 [Removed]

■ 14. Sections 225.770 through 225.771–5 are removed.

■ 15. Subpart 225.8 is revised to read as follows:

Subpart 225.8—Other International Agreements and Coordination

Sec.

225.802 Procedures.
225.802–70 Contracts for performance outside the United States and Canada.
225.802–71 End use certificates.
225.870 Contracting with Canadian contractors.
225.870–1 General.
225.870–2 Solicitation of Canadian contractors.
225.870–3 Submission of offers.
225.870–4 Contracting procedures.
225.870–5 Contract administration.
225.870–6 Termination procedures.
225.870–7 Acceptance of Canadian supplies.
225.870–8 Industrial security.
225.871 North Atlantic Treaty Organization cooperative projects.
225.871–1 Scope.
225.871–2 Definitions.
225.871–3 General.
225.871–4 Statutory waivers.
225.871–5 Directed subcontracting.
225.871–6 Disposal of property.
225.871–7 Congressional notification.
225.872 Contracting with qualifying country sources.
225.872–1 General.
225.872–2 Applicability.
225.872–3 Solicitation procedures.
225.872–4 Individual determinations.
225.872–5 Contract administration.
225.872–6 Audit.
225.872–7 Industrial security for qualifying countries.
225.872–8 Subcontracting with qualifying country sources.
225.873 Waiver of United Kingdom commercial exploitation levies.
225.873–1 Policy.
225.873–2 Procedures.

225.802 Procedures.

(b) Information on specific agreements is available as follows:

(i) Memoranda of understanding and other international agreements between the United States and the countries listed in 225.872–1 are maintained in the Office of the Director of Defense Procurement and Acquisition Policy (Program Acquisition and International Contracting) ((703) 697–9351, DSN 227–9351).

(ii) Military Assistance Advisory Groups, Naval Missions, and Joint U.S. Military Aid Groups normally have copies of the agreements applicable to the countries concerned.

(iii) Copies of international agreements covering the United Kingdom of Great Britain and Northern Ireland, Western European countries, North Africa, and the Middle East are filed with the U.S. European Command.

(iv) Agreements with countries in the Pacific and Far East are filed with the U.S. Pacific Command.

225.802–70 Contracts for performance outside the United States and Canada.

(a) When a contracting office anticipates placement of a contract for performance outside the United States and Canada, and the contracting office is not under the jurisdiction of a command for the country involved, the contracting office shall maintain liaison with the cognizant contract administration office (CAO) during preaward negotiations and postaward administration. The CAO will provide pertinent information for contract negotiations, effect appropriate coordination, and obtain required approvals for the performance of the contract.

(b) If the acquisition requires the performance of work in the foreign country by U.S. personnel or a third country contractor, or if the acquisition requires logistics support for contract employees, source inspection, or additional Government employees—

(1) The contracting officer shall coordinate with the CAO before contract award;

(2) The contracting officer shall request the following information from the CAO:

(i) The applicability of any international agreements to the acquisition.

(ii) Security requirements applicable to the area.

(iii) The standards of conduct for the prospective contractor and its employees and any consequences for violation of the standards of conduct.

(iv) Requirements for use of foreign currencies, including applicability of U.S. holdings of excess foreign currencies.

(v) Availability of logistical support for contractor employees.

(vi) Information on taxes and duties from which the Government may be exempt; and

(3) The contracting officer shall furnish the following information to the CAO:

(i) A synopsis of the work to be performed and, if practical, a copy of the solicitation.

(ii) Any contractor logistical support desired in support of U.S. or foreign military sale requirements.

(iii) Contract performance period and estimated contract value.

(iv) Number and nationality of contractor employees and date of planned arrival of contractor personnel.

(v) Contract security requirements.

(vi) Other pertinent information to effect complete coordination and cooperation.

225.802–71 End use certificates.

Contracting officers considering the purchase of an item from a foreign source may encounter a request for the signing of a certificate to indicate that the Armed Forces of the United States is the end user of the item, and that the U.S. Government will not transfer the item to third parties without authorization from the Government of the country selling the item. When encountering this situation, refer to DoD Directive 2040.3, End Use Certificates, for guidance.

225.870 Contracting with Canadian contractors.

225.870–1 General.

(a) The Canadian Government guarantees to the U.S. Government all commitments, obligations, and covenants of the Canadian Commercial Corporation under any contract or order issued to the Corporation by any contracting office of the U.S. Government. The Canadian Government has waived notice of any change or modification that may be made, from time to time, in these commitments, obligations, or covenants.

(b) For production planning purposes, Canada is part of the defense industrial base (see 225.870–2(b)).

(c) The Canadian Commercial Corporation will award and administer contracts with contractors located in Canada, except for—

(1) Negotiated acquisitions for experimental, developmental, or research work under projects other than the Defense Development Sharing Program;

(2) Acquisitions of unusual or compelling urgency;

(3) Acquisitions at or below the simplified acquisition threshold; or

(4) Acquisitions made by DoD activities located in Canada.

(d) The Canadian Commercial Corporation uses provisions in contracts with Canadian or U.S. concerns that give DoD the same production rights, data, and information that DoD would obtain in contracts with U.S. concerns.

(e) The Government of Canada will provide the following services under contracts with the Canadian Commercial Corporation without charge to DoD:

(1) *Contract administration services,* including—

(i) Cost and price analysis;

(ii) Industrial security;

(iii) Accountability and disposal of Government property;

(iv) Production expediting;

(v) Compliance with Canadian labor laws;

(vi) Processing of termination claims and disposal of termination inventory;

(vii) Customs documentation;

(viii) Processing of disputes and appeals; and

(ix) Such other related contract administration functions as may be required with respect to the Canadian Commercial Corporation contract with the Canadian supplier.

(2) *Audits.* The Public Works and Government Services Canada performs audits when needed. Route requests for audit on non-Canadian Commercial Corporation contracts through the cognizant contract management office of the Defense Contract Management Agency.

(3) *Inspection.* The Department of National Defence (Canada) provides inspection personnel, services, and facilities at no charge to DoD departments and agencies (see 225.870–7).

225.870–2 Solicitation of Canadian contractors.

(a) Except for acquisitions described in 225.870–1(c)(1) through (4), include Canadian firms on solicitation mailing lists and comparable source lists only at the request of the Canadian Commercial Corporation.

(b) Include Canadian planned producers under the Industrial Preparedness Production Planning Program on solicitation mailing lists for their planned items (see FAR 14.205–1).

(c) Send solicitations directly to Canadian firms appearing on the appropriate solicitation mailing lists. Send a complete copy of the solicitation and a listing of Canadian firms solicited to the Canadian Commercial Corporation, 11th Floor, 50 O'Connor Street, Ottawa, Ontario, K1A–0S6, Canada.

(d) If requested, furnish a solicitation to the Canadian Commercial Corporation even if no Canadian firm is solicited.

(e) Handle acquisitions at or below the simplified acquisition threshold directly with Canadian firms and not through the Canadian Commercial Corporation.

225.870–3 Submission of offers.

(a) As indicated in 225.870–4, the Canadian Commercial Corporation is the prime contractor. To indicate acceptance of offers by individual Canadian companies, the Canadian Commercial Corporation issues a letter supporting the Canadian offer and containing the following information:

(1) Name of the Canadian offeror.

(2) Confirmation and endorsement of the offer in the name of the Canadian Commercial Corporation.

(3) A statement that the Corporation shall subcontract 100 percent with the offeror.

(b) When a Canadian offer cannot be processed through the Canadian Commercial Corporation in time to meet the date for receipt of offers, the Corporation may permit Canadian firms to submit offers directly. However, the contracting officer shall receive the Canadian Commercial Corporation's endorsement before contract award.

(c) The Canadian Commercial Corporation will submit all sealed bids in terms of U.S. currency. Do not adjust contracts awarded under sealed bidding for losses or gains from fluctuation in exchange rates.

(d) Except for sealed bids, the Canadian Commercial Corporation normally will submit offers and quotations in terms of Canadian currency. The Corporation may, at the time of submitting an offer, elect to quote and receive payment in terms of U.S. currency, in which case the contract—

(1) Shall provide for payment in U.S. currency; and

(2) Shall not be adjusted for losses or gains from fluctuation in exchange rates.

225.870–4 Contracting procedures.

(a) Except for contracts described in 225.870–1(c)(1) through (4), award individual contracts covering purchases from suppliers located in Canada to the Canadian Commercial Corporation, 11th Floor, 50 O'Connor Street, Ottawa, Ontario, Canada, K1A–0S6.

(b) Direct communication with the Canadian supplier is authorized and encouraged in connection with all technical aspects of the contract, provided the Corporation's approval is obtained on any matters involving changes to the contract.

(c) Identify in the contract, the type of currency, *i.e.*, U.S. or Canadian. Contracts that provide for payment in Canadian currency shall—

(1) Quote the contract price in terms of Canadian dollars and identify the amount by the initials ''CN'', *e.g.*, $1,647.23CN; and

(2) Clearly indicate on the face of the contract the U.S./Canadian conversion rate at the time of award and the U.S. dollar equivalent of the Canadian dollar contract amount.

225.870–5 Contract administration.

(a) Assign contract administration in accordance with Part 242. When the Defense Contract Management Agency will perform contract administration in Canada, name in the contract the following payment office for disbursement of DoD funds (DoD Department Code: 17-Navy; 21-Army; 57-Air Force; 97-all other DoD components), whether payment is in Canadian or U.S. dollars: DFAS–Columbus Center, DFAS–CO/New Dominion Division, P.O. Box 182041, Columbus, OH 43218–2041.

(b) The following procedures apply to cost-reimbursement type contracts:

(1) The Public Works and Government Services Canada (PWGSC) automatically arranges audits on contracts with the Canadian Commercial Corporation.

(i) Consulting and Audit Canada (CAC) furnishes audit reports to PWGSC.

(ii) Upon advice from PWGSC, the Canadian Commercial Corporation certifies the invoice and forwards it with Standard Form (SF) 1034, Public Voucher, to the administrative contracting officer for further processing and transmittal to the disbursing office.

(2) For contracts placed directly with Canadian firms, the administrative contracting officer requests audits from the CAC, Ottawa, Ontario, Canada. The CAC/PWGSC—

(i) Approves invoices on a provisional basis pending completion of the contract and final audit;

(ii) Forwards these invoices, accompanied by SF 1034, Public Voucher, to the administrative contracting officer for further processing and transmittal to the disbursing officer; and

(iii) Furnishes periodic advisory audit reports directly to the administrative contracting officer.

225.870–6 Termination procedures.

(a) The Canadian Commercial Corporation will continue administering contracts that the U.S. contracting officer terminates.

(b) The Corporation will settle all Canadian subcontracts in accordance with the policies, practices, and procedures of the Canadian Government.

(c) The U.S. agency administering the contract with the Canadian Commercial Corporation shall provide any services required by the Canadian Commercial Corporation, including disposal of inventory, for settlement of any subcontracts placed in the United States. Settlement of such U.S. subcontracts will be in accordance with this regulation.

225.870–7 Acceptance of Canadian supplies.

(a) For contracts placed in Canada, either with the Canadian Commercial Corporation or directly with Canadian suppliers, the Department of National Defence (Canada) will perform any necessary contract quality assurance and/or acceptance, as applicable.

(b) Signature by the Department of National Defence (Canada) quality assurance representative on the DoD inspection and acceptance form is satisfactory evidence of acceptance for payment purposes.

225.870–8 Industrial security.

Industrial security for Canada shall be in accordance with the U.S.-Canada Industrial Security Agreement of March 31, 1952, as amended.

225.871 North Atlantic Treaty Organization cooperative projects.

225.871–1 Scope.

This section—

(a) Implements 22 U.S.C. 2767 and 10 U.S.C. 2350b; and

(b) Provides guidance on awarding contracts for North Atlantic Treaty Organization (NATO) cooperative projects.

225.871–2 Definitions.

As used in this section—

(a) *Cooperative project* means a jointly managed arrangement—

(1) Described in a written agreement between the parties;

(2) Undertaken to further the objectives of standardization, rationalization, and interoperability of the armed forces of NATO member countries; and

(3) Providing for—

(i) One or more of the other participants to share with the United States the cost of research and development, testing, evaluation, or joint production (including follow-on support) of certain defense articles;

(ii) Concurrent production in the United States and in another member country of a defense article jointly developed; or

(iii) Acquisition by the United States of a defense article or defense service from another member country.

(b) *Other participant* means a cooperative project participant other than the United States.

225.871–3 General.

(a) *Cooperative project authority.*

(1) Departments and agencies, that have authority to do so, may enter into cooperative project agreements with NATO or with one or more member countries of NATO under DoDD 5530.3, International Agreements.

(2) Under laws and regulations governing the negotiation and implementation of cooperative project agreements, departments and agencies may enter into contracts, or incur other obligations, on behalf of other participants without charge to any appropriation or contract authorization.

(3) Agency heads are authorized to solicit and award contracts to implement cooperative projects.

(b) Contracts implementing cooperative projects shall comply with all applicable laws relating to Government acquisition, unless a waiver is granted under 225.871–4. A waiver of certain laws and regulations may be obtained if the waiver—

(1) Is required by the terms of a written cooperative project agreement;

(2) Will significantly further NATO standardization, rationalization, and interoperability; and

(3) Is approved by the appropriate DoD official.

225.871–4 Statutory waivers.

(a) For contracts or subcontracts placed outside the United States, the Deputy Secretary of Defense may waive any provision of law that specifically prescribes—

(1) Procedures for the formation of contracts;

(2) Terms and conditions for inclusion in contracts;

(3) Requirements or preferences for—

(i) Goods grown, produced, or manufactured in the United States or in U.S. Government-owned facilities; or

(ii) Services to be performed in the United States; or

(4) Requirements regulating the performance of contracts.

(b) There is no authority for waiver of—

(1) Any provision of the Arms Export Control Act (22 U.S.C. 2751);

(2) Any provision of 10 U.S.C. 2304;

(3) The cargo preference laws of the United States, including the Military Cargo Preference Act of 1904 (10 U.S.C. 2631) and the Cargo Preference Act of 1954 (46 U.S.C. 1241(b)); or

(4) Any of the financial management responsibilities administered by the Secretary of the Treasury.

(c) Forward any request for waiver under a cooperative project to the Deputy Secretary of Defense, through the Director of Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics). The waiver request shall include a draft Determination and Findings for signature by the Deputy Secretary of Defense establishing that the waiver is necessary to significantly further NATO standardization, rationalization, and interoperability.

(d) Obtain the approval of the Deputy Secretary of Defense before committing to make a waiver in an agreement or a contract.

225.871–5 Directed Subcontracting.

(a) The Director of Defense Procurement and Acquisition Policy may authorize the direct placement of subcontracts with particular subcontractors. Directed subcontracting is not authorized unless specifically addressed in the cooperative project agreement.

(b) In some instances, it may not be feasible to name specific subcontractors at the time the agreement is concluded. However, the agreement shall clearly

state the general provisions for work sharing at the prime and subcontract level.

(c) The agreement is the authority for a contractual provision requiring the contractor to place certain subcontracts with particular subcontractors. No separate justification and approval during the acquisition process is required.

225.871–6 Disposal of property.

Dispose of property that is jointly acquired by the members of a cooperative project under the procedures established in the agreement or in a manner consistent with the terms of the agreement.

225.871–7 Congressional notification.

(a) Congressional notification is required when DoD makes a determination to award a contract or subcontract to a particular entity, if the determination was not part of the certification made under 22 U.S.C. 2767(f) before finalizing the cooperative agreement.

(1) Departments and agencies shall provide a proposed Congressional notice to the Director of Defense Procurement and Acquisition Policy in sufficient time to forward to Congress before the time of contract award.

(2) The proposed notice shall include the reason it is necessary to use the authority to designate a particular contractor or subcontractor.

(b) Congressional notification is also required each time a statutory waiver under 225.871–4 is incorporated in a contract or a contract modification, if such information was not provided in the certification to Congress before finalizing the cooperative agreement.

225.872 Contracting with qualifying country sources.

225.872–1 General.

(a) As a result of memoranda of understanding and other international agreements, DoD has determined it inconsistent with the public interest to apply restrictions of the Buy American Act or the Balance of Payments Program to the acquisition of qualifying country end products from the following qualifying countries:

Australia
Belgium
Canada
Denmark
Egypt
Federal Republic of Germany
France
Greece
Israel
Italy
Luxembourg
Netherlands
Norway
Portugal
Spain
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland

(b) Individual acquisitions of qualifying country end products from the following qualifying countries may, on a purchase-by-purchase basis (see 225.872–4), be exempted from application of the Buy American Act and the Balance of Payments Program as inconsistent with the public interest:

Austria
Finland
Sweden

(c) The determination in paragraph (a) of this subsection does not limit the authority of the Secretary concerned to restrict acquisitions to domestic sources or reject an otherwise acceptable offer from a qualifying country source when considered necessary for national defense reasons.

225.872–2 Applicability.

(a) This section applies to all acquisitions of supplies except those restricted by—

(1) U.S. National Disclosure Policy, DoDD 5230.11, Disclosure of Classified Military Information to Foreign Governments and International Organizations;

(2) U.S. defense mobilization base requirements purchased under the authority of FAR 6.302–3(a)(2)(i), except for quantities in excess of that required to maintain the defense mobilization base. This restriction does not apply to Canadian planned producers.

(i) Review individual solicitations to determine whether this restriction applies.

(ii) Information concerning restricted items may be obtained from the Deputy Under Secretary of Defense (Industrial Affairs);

(3) Other U.S. laws or regulations (*e.g.*, the annual DoD appropriations act); and

(4) U.S. industrial security requirements.

(b) This section does not apply to construction contracts.

225.872–3 Solicitation procedures.

(a) Include qualifying country sources on solicitation mailing lists upon their request (see FAR 14.205).

(b) Except for items developed under the U.S./Canadian Development Sharing Program, use the criteria for soliciting and awarding contracts to small business concerns under FAR Part 19 without regard to whether there are potential qualifying country sources for the end product. Do not consider an offer of a qualifying country end product if the solicitation is identified for the exclusive participation of small business concerns.

(c) Send solicitations directly to qualifying country sources. Solicit Canadian sources through the Canadian Commercial Corporation in accordance with 225.870.

(d) Use international air mail if solicitation destinations are outside the United States and security classification permits such use.

(e) If unusual technical or security requirements preclude the acquisition of otherwise acceptable defense equipment from qualifying country sources, review the need for such requirements. Do not impose unusual technical or security requirements solely for the purpose of precluding the acquisition of defense equipment from qualifying countries.

(f) Do not automatically exclude qualifying country sources from submitting offers because their supplies have not been tested and evaluated by the department or agency.

(1) Consider the adequacy of qualifying country service testing on a case-by-case basis. Departments or agencies that must limit solicitations to sources whose items have been tested and evaluated by the department or agency shall consider supplies from qualifying country sources that have been tested and accepted by the qualifying country for service use.

(2) The department or agency may perform a confirmatory test, if necessary.

(3) Apply U.S. test and evaluation standards, policies, and procedures when the department or agency decides that confirmatory tests of qualifying country end products are necessary.

(4) If it appears that these provisions might adversely delay service programs, obtain the concurrence of the Under Secretary of Defense (Acquisition, Technology, and Logistics), before excluding the qualifying country source from consideration.

(g) Permit industry representatives from a qualifying country to attend symposia, program briefings, prebid conferences (see FAR 14.207 and 15.201(c)), and similar meetings that address U.S. defense equipment needs and requirements. When practical, structure these meetings to allow attendance by representatives of qualifying country concerns.

225.872–4 Individual determinations.

(a) If the offer of an end product from a qualifying country source listed in 225.872–1(b), as evaluated, is low or

otherwise eligible for award, prepare a determination and findings exempting the acquisition from the Buy American Act and the Balance of Payments Program as inconsistent with the public interest, unless another exception such as the Trade Agreements Act applies.

(b) Obtain signature of the determination and findings—

(1) At a level above the contracting officer, for acquisitions valued at or below the simplified acquisition threshold; or

(2) By the chief of the contracting office, for acquisitions with a value greater than the simplified acquisition threshold.

(c) Prepare the determination and findings substantially as follows:

Service or Agency

Exemption of the Buy American Act and Balance of Payments Program

Determination and Findings

Upon the basis of the following findings and determination which I hereby make in accordance with the provisions of FAR 25.103(a), the acquisition of a qualifying country end product may be made as follows:

Findings

1. The (*contracting office*) proposes to purchase under contract number ____, (*describe item*) mined, produced, or manufactured in (*qualifying country of origin*). The total estimated cost of this acquisition is ____.

2. The United States Government and the Government of _____ have agreed to remove barriers to procurement at the prime and subcontract level for defense equipment produced in each other's countries insofar as laws and regulations permit.

3. The agreement provides that the Department of Defense will evaluate competitive offers of qualifying country end products mined, produced, or manufactured in (*qualifying country*) without imposing any price differential under the Buy American Act or the Balance of Payments Program and without taking applicable U.S. customs and duties into consideration so that such items may better compete for sales of defense equipment to the Department of Defense. In addition, the Agreement stipulates that acquisitions of such items shall fully satisfy Department of Defense requirements for performance, quality, and delivery and shall cost the Department of Defense no more than would comparable U.S. source or other foreign source defense equipment eligible for award.

4. To achieve the foregoing objectives, the solicitation contained the clause (*title and number of the Buy American Act clause contained in the contract*). Offers were solicited from other sources and the offer received from (*offeror*) is found to be otherwise eligible for award.

Determination

I hereby determine that it is inconsistent with the public interest to apply the restrictions of the Buy American Act or the Balance of Payments Program to the offer described in this determination and findings.

_____

(Date)

225.872–5 Contract administration.

(a) Arrangements exist with some qualifying countries to provide reciprocal contract administration services. Some arrangements are at no cost to either government. To determine whether such an arrangement has been negotiated and what contract administration functions are covered, contact the Deputy Director of Defense Procurement and Acquisition Policy (Program Acquisition and International Contracting), ((703) 697–9351, DSN 227–9351).

(b) When contract administration services are required on contracts to be performed in qualifying countries, direct the request to the cognizant activity listed in the Federal Directory of Contract Administration Services. The cognizant activity also will arrange contract administration services for DoD subcontracts that qualifying country sources place in the United States.

(c) The contract administration activity receiving a delegation shall determine whether any portions of the delegation are covered by memoranda of understanding annexes and, if so, shall delegate those functions to the appropriate organization in the qualifying country's government.

(d) Information on quality assurance delegations to foreign governments is in Subpart 246.4, Government Contract Quality Assurance.

225.872–6 Audit.

(a) Memoranda of understanding with some qualifying countries contain annexes that provide for reciprocal ''no-cost'' audits of contracts and subcontracts (pre- and post-award).

(b) To determine if such an annex is applicable to a particular qualifying country, contact the Deputy Director of Defense Procurement and Acquisition Policy (Program Acquisition and International Contracting), ((703) 697–9351, DSN 227–9351).

(c) Handle requests for audits in qualifying countries in accordance with 215.404–2(c).

(1) Except for the United Kingdom, send the request to the administrative contracting officer at the cognizant activity listed in Section 2B of the Federal Directory of Contract Administration Services. Send the request for audit from the United Kingdom directly to their Ministry of Defence.

(2) Send an advance copy of the request to the focal point identified by the Deputy Director of Defense Procurement and Acquisition Policy (Program Acquisition and International Contracting).

225.872–7 Industrial security for qualifying countries.

The required procedures for safeguarding classified defense information necessary for the performance of contracts awarded to qualifying country sources are in the DoD Industrial Security Regulation DoD 5220.22–R (implemented for the Army by AR 380–49; for the Navy by SECNAV Instruction 5510.1H; for the Air Force by AFI 31–601; for the Defense Information Systems Agency by DCA Instruction 240–110–8; and for the National Imagery and Mapping Agency by NIMA Instruction 5220.22).

225.872–8 Subcontracting with qualifying country sources.

In reviewing contractor subcontracting procedures, the contracting officer shall ensure that the contract does not preclude qualifying country sources from competing for subcontracts, except when restricted by national security interest reasons, mobilization base considerations, or applicable U.S. laws or regulations (see the clause at 252.225–7002, Qualifying Country Sources as Subcontractors).

225.873 Waiver of United Kingdom commercial exploitation levies.

225.873–1 Policy.

DoD and the Government of the United Kingdom (U.K.) have agreed to waive U.K. commercial exploitation levies and U.S. nonrecurring cost recoupment charges on a reciprocal basis. For U.K. levies to be waived, the offeror or contractor shall identify the levies and the contracting officer shall request a waiver before award of the contract or subcontract under which the levies are charged.

225.873–2 Procedures.

(a) The Government of the U.K. shall approve waiver of U.K. levies. When an offeror or contractor identifies a levy included in an offered or contract price, the contracting officer shall provide written notification to the Defense Security Cooperation Agency, ATTN: PSD-PMD, 1111 Jefferson Davis Highway, Arlington, VA 22202–4306, telephone (703) 601–3864. The Defense Security Cooperation Agency will request a waiver of the levy from the Government of the U.K. The notification shall include—

(1) Name of the U.K. firm;

(2) Prime contract number;

(3) Description of item for which waiver is being sought;

(4) Quantity being acquired; and

(5) Amount of levy.

(b) Waiver may occur after contract award. If levies are waived before contract award, evaluate the offer without the levy. If levies are identified but not waived before contract award, evaluate the offer inclusive of the levies.

■ 16. Subpart 225.9 is revised to read as follows:

Subpart 225.9—Customs and Duties

Sec.
225.901 Policy.
225.902 Procedures.
225.903 Exempted supplies.

225.901 Policy.

Unless the supplies are entitled to duty-free treatment under a special category in the Harmonized Tariff Schedule of the United States (*e.g.*, the Caribbean Basin Economic Recovery Act or NAFTA), or unless the supplies already have entered into the customs territory of the United States and the contractor already has paid the duty, DoD will issue duty-free entry certificates for—

(1) Qualifying country supplies (end products and components);

(2) Eligible products (end products but not components) under contracts subject to the Trade Agreements Act or NAFTA; and

(3) Other foreign supplies for which the contractor estimates that duty will exceed $200 per shipment into the customs territory of the United States.

225.902 Procedures.

(1) *Formal entry and release.*

(i) The administrative contracting officer shall—

(A) Ensure that contractors are aware of and understand any Duty-Free Entry clause requirements. Contractors should understand that failure by them or their subcontractors to provide the data required by the clause will result in treatment of the shipment as without benefit of free entry under Section XXII, Chapter 98, Subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States.

(B) Upon receipt of the required notice of purchase of foreign supplies from the contractor or any tier subcontractor—

(*1*) Verify the duty-free entitlement of supplies entering under the contract; and

(*2*) Review the prime contract to ensure that performance of the contract requires the foreign supplies (quantity and price) identified in the notice.

(C) Within 20 days after receiving the notification of purchase of foreign supplies, forward the following information in the format indicated to the Commander, DCMA New York, ATTN: Customs Team, DCMAE–GNTF, 207 New York Avenue, Building 120, Staten Island, NY 10305–5013:

We have received a contractor notification of the purchase of foreign supplies. I have verified that foreign supplies are required for the performance of the contract.

Prime Contractor Name and Address:
Prime Contractor CAGE Code:
Prime Contract Number plus Delivery Order Number, if applicable:
Total Dollar Value of the Prime Contract or Delivery Order:
Expiration Date of the Prime Contract or Delivery Order:
Foreign Supplier Name and Address:
Number of Subcontract/Purchase Order for Foreign Supplies:
Total Dollar Value of the Subcontract for Foreign Supplies:
Expiration Date of the Subcontract for Foreign Supplies:
CAO Activity Address Number:
ACO Name and Telephone Number:
ACO Code:
Signature:
Title:

(D) If a contract modification results in a change to any data verifying duty-free entitlement previously furnished, forward a revised notification including the changed data to DCMA New York.

(ii) The Customs Team, DCMAE–GNTF, DCMA New York—

(A) Is responsible for issuing duty-free entry certificates for foreign supplies purchased under a DoD contract or subcontract; and

(B) Upon receipt of import documentation for incoming shipments from the contractor, its agent, or the U.S. Customs Service, will verify the duty-free entitlement and execute the duty-free entry certificate.

(iii) Upon arrival of foreign supplies at ports of entry, the consignee, generally the contractor or its agent (import broker) for shipments to other than a military installation, will file U.S. Customs Form 7501, 7501A, or 7506, with the District Director of Customs.

(2) *Immediate entry and release.* Importations made in the name of a DoD military facility or shipped directly to a military facility are entitled to release under the immediate delivery procedure.

(i) A DoD immediate delivery application has been approved and is on file at Customs Headquarters.

(ii) The application is for an indefinite period and is good for all Customs districts, areas, and ports.

225.903 Exempted supplies.

(b)(i) The term ''supplies''—

(A) Includes—

(1) Articles known as ''stores,'' such as food, medicines, and toiletries; and

(2) All consumable articles necessary and appropriate for the propulsion, operation, and maintenance of the vessel or aircraft, such as fuel, oil, gasoline, grease, paint, cleansing compounds, solvents, wiping rags, and polishes; and

(B) Does not include portable articles necessary and appropriate for the navigation, operation, or maintenance of the vessel or aircraft and for the comfort and safety of the persons on board, such as rope, bolts and nuts, bedding, china and cutlery, which are included in the term ''equipment.''

(ii) The duty-free certificate shall be printed, stamped, or typed on the face of, or attached to, Customs Form 7501. A duly designated officer or civilian official of the appropriate department or agency shall execute the certificate in the following form:

(Date) _____

I certify that the acquisition of this material constituted a purchase of supplies by the United States for vessels or aircraft operated by the United States, and is admissible free of duty pursuant to 19 U.S.C. 1309.

(Name) _____
(Title) _____
(Organization) _____

■ 17. Subpart 225.11 is revised to read as follows:

Subpart 225.11—Solicitation Provisions and Contract Clauses

Sec.
225.1100 Scope of subpart.
225.1101 Acquisition of supplies.
225.1103 Other provisions and clauses.

225.1100 Scope of subpart.

This subpart prescribes the clauses that implement Subparts 225.1 through 225.10. The clauses that implement Subparts 225.70 through 225.75 are prescribed within those subparts.

225.1101 Acquisition of supplies.

(1) Use the provision at 252.225–7000, Buy American Act—Balance of Payments Program Certificate, instead of the provision at FAR 52.225–2, Buy American Act Certificate. Use the provision in any solicitation that includes the clause at 252.225–7001, Buy American Act and Balance of Payments Program.

(2) Use the clause at 252.225–7001, Buy American Act and Balance of Payments Program, instead of the clause at FAR 52.225–1, Buy American Act—Supplies, in solicitations and contracts unless'

(i) All line items will be acquired from a particular source or sources under the authority of FAR 6.302–3;

(ii) All line items must be domestic or qualifying country end products in accordance with Subpart 225.70. (However, the clause may still be required if Subpart 225.70 requires manufacture of the end product in the United States or in the United States or Canada, without a corresponding requirement for use of domestic components);

(iii) An exception to the Buy American Act or Balance of Payments Program applies; or

(iv) One or both of the following clauses will apply to all line items in the contract:

(A) 252.225–7021, Trade Agreements.

(B) 252.225–7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program.

(3) Use the clause at 252.225–7002, Qualifying Country Sources as Subcontractors, in solicitations and contracts that include one of the following clauses:

(i) 252.225–7001, Buy American Act and Balance of Payments Program.

(ii) 252.225–7021, Trade Agreements.

(iii) 252.225–7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program.

(4) Use the clause at 252.225–7013, Duty-Free Entry, instead of the clause at FAR 52.225–8. Do not use the clause for acquisitions of supplies that will not enter the customs territory of the United States.

(5) Use the provision at 252.225–7020, Trade Agreements Certificate, instead of the provision at FAR 52.225–6, Trade Agreements Certificate, in solicitations that include the clause at 252.225–7021, Trade Agreements.

(6)(i) Use the clause at 252.225–7021, Trade Agreements, instead of the clause at FAR 52.225–5, Trade Agreements, if the Trade Agreements Act applies.

(ii) Do not use the clause if purchase from foreign sources is restricted, unless the contracting officer anticipates a waiver of the restriction.

(iii) The acquisition of eligible and noneligible products under the same contract may result in the application of trade agreements to only some of the items acquired. In such case, indicate in the Schedule those items covered by the Trade Agreements clause.

(7) Use the provision at 252.225–7032, Waiver of United Kingdom Levies-Evaluation of Offers, in solicitations if a U.K. firm is expected to—

(i) Submit an offer; or

(ii) Receive a subcontract exceeding $1 million.

(8) Use the clause at 252.225–7033, Waiver of United Kingdom Levies, in solicitations and contracts if a U.K. firm is expected to—

(i) Submit an offer; or

(ii) Receive a subcontract exceeding $1 million.

(9) Use the provision at 252.225–7035, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate, instead of the provision at FAR 52.225–4, Buy American Act—North American Free Trade Agreement—Israeli Trade Act, in solicitations that include the clause at 252.225–7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program. Use the provision with its Alternate I when the clause at 252.225–7036 is used with its Alternate I.

(10)(i) Use the clause at 252.225–7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program, instead of the clause at FAR 52.225–3, Buy American Act—North American Free Trade Agreement—Israeli Trade Act, in solicitations and contracts for the items listed at 225.401–70, when the estimated value equals or exceeds $25,000, but is less than $169,000, and NAFTA applies to the acquisition.

(A) Use the basic clause when the estimated value equals or exceeds $56,190.

(B) Use the clause with its Alternate I when the estimated value equals or exceeds $25,000 but is less than $56,190.

(ii) Do not use the clause if purchase from foreign sources is restricted (see 225.401(a)(2)), unless the contracting officer anticipates a waiver of the restriction.

(iii) The acquisition of eligible and noneligible products under the same contract may result in the application of the North American Free Trade Agreement Implementation Act to only some of the items acquired. In such case, indicate in the Schedule those items covered by the Buy American Act-North American Free Trade Agreement Implementation Act-Balance of Payments Program clause.

225.1103 Other provisions and clauses.

(1) Unless the contracting officer knows that the prospective contractor is not a domestic concern, use the clause at 252.225–7005, Identification of Expenditures in the United States, in solicitations and contracts that—

(i) Exceed the simplified acquisition threshold; and

(ii) Are for the acquisition of—

(A) Supplies for use outside the United States;

(B) Construction to be performed outside the United States; or

(C) Services to be performed primarily outside the United States.

(2) Unless an exception applies or a waiver has been granted in accordance with Subpart 225.6, use the provision at 252.225–7031, Secondary Arab Boycott of Israel, in all solicitations.

(3) Use the clause at 252.225–7041, Correspondence in English, in solicitations and contracts when contract performance will be wholly or in part in a foreign country.

(4) Use the provision at 252.225–7042, Authorization to Perform, in solicitations when contract performance will be wholly or in part in a foreign country.

225.7000 [Amended]

■ 18. Section 225.7000 is amended as follows:

■ a. In paragraph (a), in the first sentence, by removing ''Defense'' and adding in its place ''DoD''; and

■ b. In paragraph (b), by adding ''the'' before ''Balance of Payments Program''.

■ 19. Section 225.7002–3 is amended by revising paragraph (c) to read as follows:

225.7002–3 Contract clauses.

* * * * *

(c) Use the clause at 252.225–7015, Restriction on Acquisition of Hand or Measuring Tools, in solicitations and contracts exceeding the simplified acquisition threshold that require delivery of hand or measuring tools.

225.7003 through 225.7023–3 [Removed]

■ 20. Sections 225.7003 through 225.7023–3 are removed.

■ 21. New sections 225.7003 through 225.7017–4 are added to read as follows:

225.7003 Waiver of restrictions of 10 U.S.C. 2534.

(a) Where provided for elsewhere in this subpart, the restrictions on certain foreign purchases under 10 U.S.C. 2534(a) may be waived as follows:

(1)(i) The Under Secretary of Defense (Acquisition, Technology, and Logistics), without power of delegation, may waive a restriction for a particular item for a particular foreign country upon determination that—

(A) United States producers of the item would not be jeopardized by competition from a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country; or

(B) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country, or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items under 225.872, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(ii) A notice of the determination to exercise the waiver authority shall be published in the **Federal Register** and submitted to the congressional defense committees at least 15 days before the effective date of the waiver.

(iii) The effective period of the waiver shall not exceed 1 year.

(iv) For contracts entered into prior to the effective date of a waiver, provided adequate consideration is received to modify the contract, the waiver shall be applied as directed or authorized in the waiver to—

(A) Subcontracts entered into on or after the effective date of the waiver; and

(B) Options for the procurement of items that are exercised after the effective date of the waiver, if the option prices are adjusted for any reason other than the application of the waiver.

(2) The head of the contracting activity may waive a restriction on a case-by-case basis upon execution of a determination and findings that any of the following applies:

(i) The restriction would cause unreasonable delays.

(ii) Satisfactory quality items manufactured in the United States or Canada are not available.

(iii) Application of the restriction would result in the existence of only one source for the item in the United States or Canada.

(iv) Application of the restriction is not in the national security interests of the United States.

(v) Application of the restriction would adversely affect a U.S. company.

(3) A restriction is waived when it would cause unreasonable costs. The cost of an item of U.S. or Canadian origin is unreasonable if it exceeds 150 percent of the offered price, inclusive of duty, of items that are not of U.S. or Canadian origin.

(b) In accordance with the provisions of paragraphs (a)(1)(i) through (iii) of this section, the Under Secretary of Defense (Acquisition, Technology, and Logistics) has waived the restrictions of 10 U.S.C. 2534(a) for certain items manufactured in the United Kingdom, including air circuit breakers for naval vessels, totally enclosed lifeboats, and ball and roller bearings (see 225.7006, 225.7008, and 225.7009). This waiver applies to—

(1) Procurements under solicitations issued on or after August 4, 1998; and

(2) Subcontracts and options under contracts entered into prior to August 4, 1998, under the conditions described in paragraph (a)(1)(iv) of this section.

225.7004 Restriction on acquisition of foreign buses.

225.7004–1 Restriction.

In accordance with 10 U.S.C. 2534, do not acquire a multipassenger motor vehicle (bus) unless it is manufactured in the United States or Canada.

225.7004–2 Applicability.

Apply this restriction if the buses are purchased, leased, rented, or made available under contracts for transportation services.

225.7004–3 Exceptions.

This restriction does not apply in any of the following circumstances:

(a) Buses manufactured outside the United States and Canada are needed for temporary use because buses manufactured in the United States or Canada are not available to satisfy requirements that cannot be postponed. Such use may not, however, exceed the lead time required for acquisition and delivery of buses manufactured in the United States or Canada.

(b) The requirement for buses is temporary in nature. For example, to meet a special, nonrecurring requirement or a sporadic and infrequent recurring requirement, buses manufactured outside the United States and Canada may be used for temporary periods of time. Such use may not, however, exceed the period of time needed to meet the special requirement.

(c) Buses manufactured outside the United States and Canada are available at no cost to the U.S. Government.

(d) The acquisition is for an amount at or below the simplified acquisition threshold.

225.7004–4 Waiver.

The waiver criteria at 225.7003(a) apply to this restriction.

225.7005 Restriction on certain chemical weapons antidote.

225.7005–1 Restriction.

In accordance with 10 U.S.C. 2534 and defense industrial mobilization requirements (see Subpart 208.72), do not acquire chemical weapons antidote contained in automatic injectors, or the components for such injectors, unless the chemical weapons antidote or component is manufactured in the United States or Canada by a company that—

(a) Is a producer under the industrial preparedness program at the time of contract award;

(b) Has received all required regulatory approvals; and

(c) Has the plant, equipment, and personnel to perform the contract in the United States or Canada at the time of contract award.

225.7005–2 Exception.

This restriction does not apply if the acquisition is for an amount at or below the simplified acquisition threshold.

225.7005–3 Waiver.

The waiver criteria at 225.7003(a) apply to this restriction.

225.7006 Restriction on air circuit breakers for naval vessels.

225.7006–1 Restriction.

In accordance with 10 U.S.C. 2534, do not acquire air circuit breakers for naval vessels unless they are manufactured in the United States or Canada.

225.7006–2 Exceptions.

This restriction does not apply if the acquisition is—

(a) For an amount at or below the simplified acquisition threshold; or

(b) For spare or repair parts needed to support air circuit breakers manufactured outside the United States. Support includes the purchase of spare air circuit breakers when those from alternate sources are not interchangeable.

225.7006–3 Waiver.

(a) The waiver criteria at 225.7003(a) apply to this restriction.

(b) The Under Secretary of Defense (Acquisition, Technology, and Logistics) has waived the restriction for air circuit breakers manufactured in the United Kingdom. See 225.7003(b) for applicability.

225.7006–4 Solicitation provision and contract clause.

(a) Use the provision at 252.225–7037, Evaluation of Offers for Air Circuit Breakers, in solicitations requiring air circuit breakers for naval vessels unless—

(1) An exception applies; or

(2) A waiver has been granted, other than the waiver for the United Kingdom, which has been incorporated into the provision.

(b) Use the clause at 252.225–7038, Restriction on Acquisition of Air Circuit Breakers, in solicitations and contracts requiring air circuit breakers for naval vessels unless—

(1) An exception applies; or

(2) A waiver has been granted, other than the waiver for the United Kingdom, which has been incorporated into the clause.

225.7007 Restrictions on anchor and mooring chain.

225.7007–1 Restrictions.

(a) In accordance with Section 8041 of the Fiscal Year 1991 DoD Appropriations Act (Public Law 101–511) and similar sections in subsequent DoD appropriations acts, do not acquire welded shipboard anchor and mooring chain, four inches or less in diameter, unless—

(1) It is manufactured in the United States, including cutting, heat treating, quality control, testing, and welding (both forging and shot blasting process); and

(2) The cost of the components manufactured in the United States exceeds 50 percent of the total cost of components.

(b) 10 U.S.C. 2534 also restricts acquisition of welded shipboard anchor and mooring chain, four inches or less in diameter, when used as a component of a naval vessel. However, the Appropriations Act restriction described in paragraph (a) of this subsection takes precedence over the restriction of 10 U.S.C. 2534.

225.7007–2 Waiver.

(a) The Secretary of the department responsible for acquisition may waive the restriction in 225.7007–1(a), on a case-by-case basis, if—

(1) Sufficient domestic suppliers are not available to meet DoD requirements on a timely basis; and

(2) The acquisition is necessary to acquire capability for national security purposes.

(b) Document the waiver in a written determination and findings containing—

(1) The factors supporting the waiver; and

(2) A certification that the acquisition must be made in order to acquire capability for national security purposes.

(c) Provide a copy of the determination and findings to the House and Senate Committees on Appropriations.

225.7007–3 Contract clause.

Unless a waiver has been granted, use the clause at 252.225–7019, Restriction on Acquisition of Anchor and Mooring Chain, in solicitations and contracts requiring welded shipboard anchor or mooring chain four inches or less in diameter.

225.7008 Restrictions on totally enclosed lifeboat survival systems.

225.7008–1 Restrictions.

(a) In accordance with Section 8124 of the Fiscal Year 1994 DoD Appropriations Act (Pub. L. 103–139) and Section 8093 of the Fiscal Year 1995 DoD Appropriations Act (Pub. L. 103–335), do not purchase a totally enclosed lifeboat survival system, which consists of the lifeboat and associated davits and winches, unless—

(1) 50 percent or more of the components are manufactured in the United States; and

(2) 50 percent or more of the labor in the final manufacture and assembly of the entire system is performed in the United States.

(b) In accordance with 10 U.S.C. 2534(a), do not purchase a totally enclosed lifeboat that is a component of a naval vessel unless it is manufactured in the United States or Canada.

(1) 10 U.S.C. 2534(h) prohibits the use of a contract clause or certification to implement this restriction.

(2) Implement this restriction through management and oversight techniques that achieve the objective of the restriction without imposing a significant management burden on the Government or the contractor.

225.7008–2 Exceptions.

The restriction in 225.7008–1(b) does not apply if the acquisition is—

(a) For an amount at or below the simplified acquisition threshold; or

(b) For spare or repair parts needed to support totally enclosed lifeboats manufactured outside the United States.

225.7008–3 Waiver.

(a) The waiver criteria at 225.7003(a) apply to the restriction of 225.7008–1(b).

(b) The Under Secretary of Defense (Acquisition, Technology, and Logistics) has waived the restriction of 225.7008–1(b) for totally enclosed lifeboats manufactured in the United Kingdom. See 225.7003(b) for applicability.

225.7008–4 Contract clause.

Use the clause at 252.225–7039, Restriction on Acquisition of Totally Enclosed Lifeboat Survival Systems, in solicitations and contracts that require delivery of totally enclosed lifeboat survival systems.

225.7009 Restrictions on ball and roller bearings.

225.7009–1 Restrictions.

(a) In accordance with 10 U.S.C. 2534, through fiscal year 2005, do not acquire ball and roller bearings or bearing components unless they are manufactured in the United States or Canada.

(b) In accordance with Section 8099 of the Fiscal Year 1996 DoD Appropriations Act (Pub. L. 104–61) and similar sections in subsequent DoD appropriations acts, do not acquire ball and roller bearings unless the bearings and bearing components are manufactured in the United States or Canada.

225.7009–2 Exceptions.

(a) The restriction in 225.7009–1(a) does not apply to—

(1) Acquisitions using simplified acquisition procedures, unless ball or roller bearings or bearing components are the end items being purchased;

(2) Commercial items incorporating ball or roller bearings;

(3) Miniature and instrument ball bearings needed to meet urgent military requirements;

(4) Items acquired overseas for use overseas; or

(5) Ball and roller bearings or bearing components, or items containing bearings, for use in a cooperative or co-production project under an international agreement. This exception does not apply to miniature and instrument ball bearings.

(b) The restriction in 225.7009–1(b) does not apply to contracts or subcontracts for the acquisition of commercial items, except for commercial ball and roller bearings acquired as end items.

225.7009–3 Waiver.

(a)(1) The waiver criteria at 225.7003(a)(1) apply to the restriction of 225.7009–1(a).

(2) The Under Secretary of Defense (Acquisition, Technology, and Logistics) has waived the restriction of 225.7009–1(a) for ball and roller bearings manufactured in the United Kingdom. See 225.7003(b) for applicability.

(b) The head of the contracting activity may waive the restriction in 225.7009–1(a)—

(1) Upon execution of a determination and findings that—

(i) No domestic (U.S. or Canadian) bearing manufacturer meets the requirement;

(ii) It is not in the best interests of the United States to qualify a domestic bearing to replace a qualified nondomestic bearing.

(A) This determination shall be based on a finding that the qualification of a domestically manufactured bearing would cause unreasonable costs or delay.

(B) A finding that a cost is unreasonable should take into

consideration DoD policy to assist the domestic industrial mobilization base.

(C) Contracts should be awarded to domestic bearing manufacturers to increase their capability to reinvest and become more competitive;

(iii) Application of the restriction would result in the existence of only one source for the item in the United States or Canada;

(iv) Application of the restriction is not in the national security interests of the United States; or

(v) Application of the restriction would adversely affect a U.S. company.

(2) If the acquisition is for an amount less than the simplified acquisition threshold and simplified acquisition procedures are being used.

(3) For multiyear contracts or contracts exceeding 12 months, except those for miniature and instrument ball bearings, if—

(i) The head of the contracting activity executes a determination and findings in accordance with paragraph (b)(1) of this subsection;

(ii) The contractor submits a written plan for transitioning from the use of nondomestic to domestically manufactured bearings;

(iii) The contractor's written plan—

(A) States whether a domestically manufactured bearing can be qualified, at a reasonable cost, for use during the course of the contract period;

(B) Identifies any bearings that are not domestically manufactured, their application, and source of supply; and

(C) Describes, including cost and timetable, the transition to a domestically manufactured bearing (the timetable for the transition should normally take no longer than 24 months from the date the waiver is granted); and

(iv) The contracting officer accepts the contractor's plan and incorporates it into the contract.

(4) For miniature and instrument ball bearings, only if the contractor agrees to acquire a like quantity and type of domestic manufacture for nongovernmental use.

(c) The Secretary of the department responsible for acquisition may waive the restriction in 225.7009–1(b), on a case-by-case basis, by certifying to the House and Senate Committees on Appropriations that—

(1) Adequate domestic supplies are not available to meet DoD requirements on a timely basis; and

(2) The acquisition must be made in order to acquire capability for national security purposes.

225.7009–4 Contract clause.

(a) Use the clause at 252.225–7016, Restriction on Acquisition of Ball and Roller Bearings, in solicitations and contracts, unless—

(1) The items being acquired do not contain ball and roller bearings; or

(2) An exception applies or a waiver has been granted, other than the waiver for the United Kingdom, which has been incorporated into the clause.

(b) Use the clause with its Alternate I in solicitations and contracts that use simplified acquisition procedures.

225.7010 Restriction on vessel propellers.

225.7010–1 Restriction.

In accordance with Section 8064 of the Fiscal Year 2001 DoD Appropriations Act (Public Law 106–259), do not use fiscal year 2000 or 2001 funds to acquire vessel propellers other than those produced by a domestic source and of domestic origin, *i.e.*, vessel propellers—

(a) Manufactured in the United States or Canada; and

(b) For which all component castings were poured and finished in the United States or Canada.

225.7010–2 Exceptions.

This restriction does not apply to contracts or subcontracts for acquisition of commercial items.

225.7010–3 Waiver.

The Secretary of the department responsible for acquisition may waive this restriction on a case-by-case basis, by certifying to the House and Senate Committees on Appropriations that—

(a) Adequate domestic supplies are not available to meet DoD requirements on a timely basis; and

(b) The acquisition must be made in order to acquire capability for national security purposes.

225.7010–4 Contract clause.

Use the clause at 252.225–7023, Restriction on Acquisition of Vessel Propellers, in solicitations and contracts that use fiscal year 2000 or 2001 funds for the acquisition of vessels or vessel propellers, unless—

(a) An exception applies or a waiver has been granted; or

(b) The vessels being acquired do not contain vessel propellers.

225.7011 Restriction on carbon, alloy, and armor steel plate.

225.7011–1 Restriction.

In accordance with Section 8111 of the Fiscal Year 1992 DoD Appropriations Act (Public Law 102–172) and similar sections in subsequent DoD appropriations acts, do not acquire any of the following types of carbon, alloy, or armor steel plate unless it is melted and rolled in the United States or Canada:

(a) Carbon, alloy, or armor steel plate in Federal Supply Class 9515.

(b) Carbon, alloy, or armor steel plate described by specifications of the American Society for Testing Materials or the American Iron and Steel Institute.

225.7011–2 Waiver.

The Secretary of the department responsible for acquisition may waive this restriction, on a case-by-case basis, by certifying to the House and Senate Committees on Appropriations that—

(a) Adequate U.S. or Canadian supplies are not available to meet DoD requirements on a timely basis; and

(b) The acquisition must be made in order to acquire capability for national security purposes.

225.7011–3 Contract clause.

Unless a waiver has been granted, use the clause at 252.225–7030, Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate, in solicitations and contracts that'

(a) Require the delivery to the Government of carbon, alloy, or armor steel plate that will be used in a facility owned by the Government or under the control of DoD; or

(b) Require contractors operating in a Government-owned facility or a facility under the control of DoD to purchase carbon, alloy, or armor steel plate.

225.7012 Restriction on supercomputers.

225.7012–1 Restriction.

In accordance with Section 8112 of Public Law 100–202, and similar sections in subsequent DoD appropriations acts, do not purchase a supercomputer unless it is manufactured in the United States.

225.7012–2 Waiver.

The Secretary of Defense may waive this restriction, on a case-by-case basis, after certifying to the Armed Services and Appropriations Committees of Congress that—

(a) Adequate U.S. supplies are not available to meet requirements on a timely basis; and

(b) The acquisition must be made in order to acquire capability for national security purposes.

225.7012–3 Contract clause.

Unless a waiver has been granted, use the clause at 252.225–7011, Restriction on Acquisition of Supercomputers, in solicitations and contracts for the acquisition of supercomputers.

225.7013 Restrictions on construction or repair of vessels in foreign shipyards.

In accordance with 10 U.S.C. 7309—

(a) Do not award a contract to construct in a foreign shipyard—

(1) A vessel for any of the armed forces; or

(2) A major component of the hull or superstructure of a vessel for any of the armed forces; and

(b) Do not overhaul, repair, or maintain in a foreign shipyard, a naval vessel (or any other vessel under the jurisdiction of the Secretary of the Navy) homeported in the United States. This restriction does not apply to voyage repairs.

225.7014 Restriction on overseas military construction.

For restriction on award of military construction contracts to be performed in the United States territories and possessions in the Pacific and on Kwajalein Atoll, or in countries bordering the Arabian Gulf, see 236.274(a).

225.7015 Restriction on overseas architect-engineer services.

For restriction on award of architect-engineer contracts to be performed in Japan, in any North Atlantic Treaty Organization member country, or in countries bordering the Arabian Gulf, see 236.602–70.

225.7016 Restriction on research and development.

(a) In accordance with Public Law 92–570, do not use DoD appropriations to make an award to any foreign corporation, organization, person, or entity, for research and development in connection with any weapon system or other military equipment, if there is a U.S. corporation, organization, person, or entity—

(1) Equally competent; and

(2) Willing to perform at a lower cost.

(b) This restriction does not affect the requirements of FAR Part 35 for selection of research and development contractors. However, when a U.S. source and a foreign source are equally competent, award to the source that will provide the services at the lower cost.

225.7017 Restriction on Ballistic Missile Defense research, development, test, and evaluation.

225.7017–1 Definitions.

Competent, foreign firm, and *U.S. firm* are defined in the provision at 252.225–7018, Notice of Prohibition of Certain Contracts with Foreign Entities for the Conduct of Ballistic Missile Defense Research, Development, Test, and Evaluation.

225.7017–2 Restriction.

In accordance with Section 222 of the DoD Authorization Act for Fiscal Years 1988 and 1989 (Pub. L. 100–180), do not use any funds appropriated to or for the use of DoD to enter into or carry out a contract with a foreign government or firm, including any contract awarded as a result of a broad agency announcement, if the contract provides for the conduct of research, development, test, and evaluation (RDT&E) in connection with the Ballistic Missile Defense Program.

225.7017–3 Exceptions.

This restriction does not apply—

(a) To contracts awarded to a foreign government or firm if the contracting officer determines that—

(1) The contract will be performed within the United States;

(2) The contract is exclusively for RDT&E in connection with antitactical ballistic missile systems; or

(3) The foreign government or firm agrees to share a substantial portion of the total contract cost. Consider the foreign share as substantial if it is equitable with respect to the relative benefits that the United States and the foreign parties will derive from the contract. For example, if the contract is more beneficial to the foreign party, its share of the cost should be correspondingly higher; or

(b) If the head of the contracting activity certifies in writing, before contract award, that a U.S. firm cannot competently perform a contract for RDT&E at a price equal to or less than the price at which a foreign government or firm would perform the RDT&E. The contracting officer or source selection authority, as applicable, shall make a determination that will be the basis for the certification.

(1) The determination shall—

(i) Describe the contract effort;

(ii) State the number of proposals solicited and received from both U.S. and foreign firms;

(iii) Identify the proposed awardee and the amount of the contract;

(iv) State that selection of the contractor was based on the evaluation factors contained in the solicitation, or the criteria contained in the broad agency announcement; and

(v) State that a U.S. firm cannot competently perform the effort at a price equal to, or less than, the price at which the foreign awardee would perform it.

(2) When either a broad agency announcement or program research and development announcement is used, or when the determination is otherwise not based on direct competition between foreign and domestic proposals, the determination shall not be merely conclusory.

(i) The determination shall specifically explain its basis, include a description of the method used to determine the competency of U.S. firms, and describe the cost or price analysis performed.

(ii) Alternately, the determination may contain—

(A) A finding, including the basis for such finding, that the proposal was submitted solely in response to the terms of a broad agency announcement, program research and development announcement, or other solicitation document without any technical guidance from the program office; and

(B) A finding, including the basis for such finding, that disclosure of the information in the proposal for the purpose of conducting a competitive acquisition is prohibited.

(3) Within 30 days after contract award, forward a copy of the certification and supporting documentation to the Missile Defense Agency, Attn: MDA/DRI, 7100 Defense Pentagon, Washington, DC 20301–7100.

225.7017–4 Solicitation provision.

Unless foreign participation is otherwise excluded, use the provision at 252.225–7018, Notice of Prohibition of Certain Contracts With Foreign Entities for the Conduct of Ballistic Missile Defense Research, Development, Test, and Evaluation, in competitively negotiated solicitations for RDT&E in connection with the Ballistic Missile Defense Program.

■ 22. Sections 225.7100 through 225.7103–3 are revised to read as follows:

225.7100 Scope of subpart.

This subpart contains foreign product restrictions that are based on policies designed to protect the defense industrial base.

225.7101 Definitions.

Domestic manufacture is defined in the clause at 252.225–7025, Restriction on Acquisition of Forgings.

225.7102 Forgings.

225.7102–1 Policy.

When acquiring the following forging items, whether as end items or components, acquire items that are of domestic manufacture to the maximum extent practicable:

Items	Categories
Ship propulsion shafts	Excludes service and landing craft shafts.
Periscope tubes	All.
Ring forgings for bull gears.	All greater than 120 inches in diameter.

225.7102–2 Exceptions.

The policy in 225.7102–1 does not apply to acquisitions—

(a) Using simplified acquisition procedures, unless the restricted item is the end item being purchased;

(b) Overseas for overseas use; or

(c) When the quantity acquired exceeds the amount needed to maintain the U.S. defense mobilization base (provided the excess quantity is an economical purchase quantity). The requirement for domestic manufacture does not apply to the quantity above that required to maintain the base, in which case, qualifying country sources may compete.

225.7102–3 Waiver.

Upon request from a contractor, the contracting officer may waive the requirement for domestic manufacture of the items listed in 225.7102–1.

225.7102–4 Contract clause.

Use the clause at 252.225–7025, Restriction on Acquisition of Forgings, in solicitations and contracts, unless—

(a) The supplies being acquired do not contain any of the items listed in 225.7102–1; or

(b) An exception in 225.7102–2 applies. If an exception applies to only a portion of the acquisition, specify the excepted portion in the solicitation and contract.

225.7103 Polyacrylonitrile (PAN) carbon fiber.

225.7103–1 Policy.

DoD has imposed restrictions on the acquisition of PAN carbon fiber from foreign sources. DoD is phasing out the restrictions over the 5-year period ending May 31, 2005. Contractors with contracts that contain the clause at 252.225–7022 shall use U.S. or Canadian manufacturers or producers for all PAN carbon fiber requirements.

225.7103–2 Waivers.

With the approval of the chief of the contracting office, the contracting officer may waive, in whole or in part, the requirement of the clause at 252.225–7022. For example, a waiver may be justified if a qualified U.S. or Canadian source cannot meet scheduling requirements.

225.7103–3 Contract clause.

Use the clause at 252.225–7022, Restriction on Acquisition of Polyacrylonitrile (PAN) Carbon Fiber, in solicitations and contracts for major systems as follows:

(a) In solicitations and contracts issued on or before May 31, 2003, if—

(1) The system is not yet in production (milestone C as defined in DoDI 5000.2, Operation of the Defense Acquisition System); or

(2) The clause was used in prior program contracts.

(b) In solicitations and contracts issued during the period beginning June 1, 2003, and ending May 31, 2005, if the system is not yet in development and demonstration (milestone B as defined in DoDI 5000.2).

■ 23. Section 225.7200 is revised to read as follows:

225.7200 Scope of subpart.

This subpart—

(a) Prescribes procedures for contractor reporting and DoD monitoring of the volume, type, and nature of contract performance outside the United States; and

(b) Implements 10 U.S.C. 2410g, which requires offerors and contractors to notify DoD of any intention to perform a DoD contract outside the United States and Canada when the contract could be performed inside the United States or Canada.

■ 24. Sections 225.7202 and 225.7203 are revised to read as follows:

225.7202 Distribution of reports.

Forward a copy of reports submitted in accordance with the clause at 252.225–7004, Reporting of Contract Performance Outside the United States, to the Deputy Director of Defense Procurement and Acquisition Policy (Program Acquisition and International Contracting), OUSD(AT&L)DPAP(PAIC), Washington, DC 20301–3060. This is necessary to satisfy the requirement of 10 U.S.C. 2410g that the notifications (or copies) be maintained in compiled form for 5 years after the date of submission.

225.7203 Solicitation provision and contract clause.

Except for acquisitions described in 225.7201—

(a) Use the provision at 252.225–7003, Report of Intended Performance Outside the United States, in solicitations with a value exceeding $500,000; and

(b) Use the clause at 252.225–7004, Reporting of Contract Performance Outside the United States, in solicitations and contracts with a value exceeding $500,000.

■ 25. Section 225.7301 is amended by revising paragraphs (b) through (d) to read as follows:

225.7301 General.

* * * * *

(b) Conduct FMS acquisitions under the same acquisition and contract management procedures used for other defense acquisitions.

(c) Separately identify known FMS requirements and the FMS customer in solicitations.

(d) Clearly identify contracts for known FMS requirements by marking ''FMS requirement'' on the face of the contract along with the FMS customer and the case identifier code.

■ 26. Section 225.7302 is amended as follows:

a. By revising the introductory text;

■ b. In paragraph (a)(1) by removing the period and adding a semicolon in its place; and

■ c. By revising paragraph (a)(4). The revised text reads as follows:

225.7302 Procedures.

For FMS programs that will require an acquisition, the contracting officer will assist the departmental/agency activity responsible for preparing the LOA by—

(a) * * *

(4) For noncompetitive acquisitions over $10,000, ask the prospective contractor for information on price, delivery, and other relevant factors. The request for information shall identify the fact that the information is for a potential foreign military sale and shall identify the foreign customer; and

* * * * *

225.7303 [Amended]

■ 27. Section 225.7303 is amended as follows:

■ a. In paragraph (a), in the first sentence, by removing the phrase ''as are'';

■ b. In paragraph (a), in the second sentence, by removing ''Application'' and adding in its place ''However, application''; and

■ c. In paragraph (b), in the first sentence, by removing ''must'' and adding in its place ''shall''.

■ 28. Section 225.7303–2 is amended as follows:

■ a. In paragraph (a) introductory text, by revising the last sentence;

■ b. By revising paragraph (a)(1);

■ c. In paragraph (a)(2)(ii), by adding ''or'' before ''operations/tactics'';

■ d. By revising paragraph (c) introductory text; and

■ e. In paragraph (c)(1) by removing the period and adding in its place ''; and''. The revised text reads as follows:

225.7303–2 Cost of doing business with a foreign government or an international organization.

(a) * * * Examples of such costs include, but are not limited to, the following:

(1) Selling expenses (not otherwise limited by FAR Part 31), such as—

(i) Maintaining international sales and service organizations;

(ii) Sales commissions and fees in accordance with FAR Subpart 3.4;

(iii) Sales promotions, demonstrations, and related travel for sales to foreign governments. Section 126.8 of the International Traffic in Arms Regulations (22 CFR 126.8) may require Government approval for these costs to be allowable, in which case the appropriate Government approval shall be obtained; and

(iv) Configuration studies and related technical services undertaken as a direct selling effort to a foreign country.

* * * * *

(c) The limitations for major contractors on independent research and development and bid and proposal (IR&D/B&P) costs for projects that are of potential interest to DoD, in 231.205–18(c)(iii), do not apply to FMS contracts, except as provided in 225.7303–5. The allowability of IR&D/B&P costs on contracts for FMS not wholly paid for from funds made available on a nonrepayable basis is limited to the contract's allocable share of the contractor's total IR&D/B&P expenditures. In pricing contracts for such FMS—

* * * * *

■ 29. Section 225.7303–4 is revised to read as follows:

225.7303–4 Contingent fees.

(a) Except as provided in paragraph (b) of this subsection, contingent fees are generally allowable under DoD contracts, provided—

(1) The fees are paid to a bona fide employee or a bona fide established commercial or selling agency maintained by the prospective contractor for the purpose of securing business (see FAR Part 31 and FAR Subpart 3.4); and

(2) The contracting officer determines that the fees are fair and reasonable.

(b)(1) Under DoD 5105.38–M, LOAs for requirements for the governments of Australia, Taiwan, Egypt, Greece, Israel, Japan, Jordan, Republic of Korea, Kuwait, Pakistan, Philippines, Saudi Arabia, Turkey, Thailand, or Venezuela (Air Force) shall provide that all U.S. Government contracts resulting from the LOAs prohibit the reimbursement of contingent fees as an allowable cost under the contract, unless the contractor identifies the payments and the foreign customer approves the payments in writing before contract award (see 225.7308(a)).

(2) For FMS to countries not listed in paragraph (b)(1) of this subsection, contingent fees exceeding $50,000 per FMS case are unallowable under DoD contracts, unless the contractor identifies the payment and the foreign customer approves the payment in writing before contract award.

■ 30. Section 225.7303–5 is amended by revising paragraphs (a) and (b) to read as follows:

225.7303–5 Acquisitions wholly paid for from nonrepayable funds.

(a) In accordance with 22 U.S.C. 2762(d), price FMS wholly paid for from funds made available on a nonrepayable basis on the same costing basis with regard to profit, overhead, IR&D/B&P, and other costing elements as is applicable to acquisitions of like items purchased by DoD for its own use.

(b) Direct costs associated with meeting a foreign customer's additional or unique requirements are allowable under such contracts. Indirect burden rates applicable to such direct costs are permitted at the same rates applicable to acquisitions of like items purchased by DoD for its own use.

* * * * *

■ 31. Section 225.7305 is amended by revising the first sentence to read as follows:

225.7305 Limitation of liability.

Advise the contractor when the foreign customer will assume the risk for loss or damage under the appropriate limitation of liability clause(s) (see FAR Subpart 46.8). * * *

■ 32. Section 225.7308 is revised to read as follows:

225.7308 Contract clauses.

(a) Use the clause at 252.225–7027, Restriction on Contingent Fees for Foreign Military Sales, in solicitations and contracts for FMS. Insert in paragraph (b)(1) of the clause the name(s) of any foreign country customer(s) listed in 225.7303–4(b).

(b) Use the clause at 252.225–7028, Exclusionary Policies and Practices of Foreign Governments, in solicitations and contracts for the purchase of supplies and services for international military education training and FMS.

■ 33. Section 225.7401 is amended by revising paragraph (d) to read as follows:

225.7401 General.

* * * * *

(d) For Air Force contracts: HQ AFSFC/SFPA; telephone, DSN 945–7035/36 or commercial (210) 925–7035/36.

* * * * *

PART 242—CONTRACT ADMINISTRATION

242.302 [Amended]

■ 34. Section 242.302 is amended by removing paragraph (a)(19).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 35. Section 252.212–7001 is amended as follows:

■ a. By revising the clause date and paragraph (b); and

■ b. In paragraph (c), in entry ''252.225–7014'', by removing ''(MAR 1998)'' and adding in its place ''(APR 2003)''. The revised text reads as follows:

252.212–7001 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items (Apr 2003)

* * * * *

(b) The Contractor agrees to comply with any clause that is checked on the following list of Defense FAR Supplement clauses which, if checked, is included in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items or components.

____ 252.205–7000 Provision of Information to Cooperative Agreement Holders (DEC 1991) (10 U.S.C. 2416).

____ 252.219–7003 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts) (APR 1996) (15 U.S.C. 637).

____ 252.219–7004 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (Test Program) (JUN 1997) (15 U.S.C. 637 note).

____ 252.225–7001 Buy American Act and Balance of Payments Program (APR 2003) (41 U.S.C. 10a–10d, E.O. 10582).

____ 252.225–7012 Preference for Certain Domestic Commodities (FEB 2003) (10 U.S.C. 2533a).

____ 252.225–7014 Preference for Domestic Specialty Metals (APR 2003) (10 U.S.C. 2533a).

____ 252.225–7015 Restriction on Acquisition of Hand or Measuring Tools (APR 2003) (10 U.S.C. 2533a).

____ 252.225–7016 Restriction on Acquisition of Ball and Roller Bearings (APR 2003) (____ Alternate I) (APR 2003) (10 U.S.C. 2534 and Section 8099 of Public Law 104–61 and similar sections in subsequent DoD appropriations acts).

____ 252.225–7021 Trade Agreements (APR 2003) (19 U.S.C. 2501–2518 and 19 U.S.C. 3301 note).

____ 252.225–7027 Restriction on Contingent Fees for Foreign Military Sales (APR 2003) (22 U.S.C. 2779).

____ 252.225–7028 Exclusionary Policies and Practices of Foreign Governments (APR 2003) (22 U.S.C. 2755).

____ 252.225–7036 Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program (APR 2003) (____ Alternate I) (APR 2003) (41 U.S.C. 10a–10d and 19 U.S.C. 3301 note).

____ 252.225–7038 Restriction on Acquisition of Air Circuit Breakers (APR 2003) (10 U.S.C. 2534(a)(3)).
____ 252.227–7015 Technical Data—Commercial Items (NOV 1995) (10 U.S.C. 2320).
____ 252.227–7037 Validation of Restrictive Markings on Technical Data (SEP 1999) (10 U.S.C. 2321).
____ 252.232–7003 Electronic Submission of Payment Requests (MAR 2003) (10 U.S.C. 2227).
____ 252.243–7002 Requests for Equitable Adjustment (MAR 1998) (10 U.S.C. 2410).
____ 252.247–7023 Transportation of Supplies by Sea (MAY 2002)
(____Alternate I) (MAR 2000)
(____Alternate II) (MAR 2000) (10 U.S.C. 2631).
____ 252.247–7024 Notification of Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631).

* * * * *

■ 36. Sections 252.225–7000 through 252.225–7003 are revised to read as follows:

252.225–7000 Buy American Act—Balance of Payments Program Certificate.

As prescribed in 225.1101(1), use the following provision:

Buy American Act—Balance of Payments Program Certificate (Apr 2003)

(a) *Definitions. Domestic end product, foreign end product, qualifying country,* and *qualifying country end product* have the meanings given in the Buy American Act and Balance of Payments Program clause of this solicitation.

(b) *Evaluation.* The Government—

(1) Will evaluate offers in accordance with the policies and procedures of Part 225 of the Defense Federal Acquisition Regulation Supplement; and

(2) Will evaluate offers of qualifying country end products without regard to the restrictions of the Buy American Act or the Balance of Payments Program.

(c) *Certifications and identification of country of origin.*

(1) For all line items subject to the Buy American Act and Balance of Payments Program clause of this solicitation, the offeror certifies that—

(i) Each end product, except those listed in paragraph (c)(2) or (3) of this provision, is a domestic end product; and

(ii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The offeror certifies that the following end products are qualifying country end products:

_____
(Line Item Number Country of Origin)

_____
(Country of Origin)

(3) The following end products are other foreign end products:

_____
(Line Item Number)

_____
(Country of Origin) (If known)

(End of provision)

252.225–7001 Buy American Act and Balance of Payments Program.

As prescribed in 225.1101(2), use the following clause:

Buy American Act and Balance of Payments Program (Apr 2003)

(a) *Definitions.* As used in this clause—

(1) *Component* means an article, material, or supply incorporated directly into an end product.

(2) *Domestic end product means*—

(i) An unmanufactured end product that has been mined or produced in the United States; or

(ii) An end product manufactured in the United States if the cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

(A) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(B) It is inconsistent with the public interest to apply the restrictions of the Buy American Act.

(3) *End product* means those articles, materials, and supplies to be acquired under this contract for public use.

(4) *Foreign end product* means an end product other than a domestic end product.

(5) *Qualifying country* means any country set forth in subsection 225.872–1 of the Defense Federal Acquisition Regulation Supplement.

(6) *Qualifying country component* means a component mined, produced, or manufactured in a qualifying country.

(7) *Qualifying country end product* means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if the cost of the following types of components exceeds 50 percent of the cost of all its components:

(A) Components mined, produced, or manufactured in a qualifying country.

(B) Components mined, produced, or manufactured in the United States.

(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States.

(b) This clause implements the Buy American Act (41 U.S.C. Section 10a–d). Unless otherwise specified, this clause applies to all line items in the contract.

(c) The Contractor shall deliver only domestic end products unless, in its offer, it specified delivery of other end products in the Buy American Act—Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product, the Contractor shall deliver a qualifying country end product or, at the Contractor's option, a domestic end product.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(End of clause)

252.225–7002 Qualifying Country Sources as Subcontractors.

As prescribed in 225.1101(3), use the following clause:

Qualifying Country Sources as Subcontractors (Apr 2003)

(a) *Definition. Qualifying country,* as used in this clause, means any country set forth in subsection 225.872–1 of the Defense Federal Acquisition Regulation (FAR) Supplement.

(b) Subject to the restrictions in section 225.872 of the Defense FAR Supplement, the Contractor shall not preclude qualifying country sources or U.S. sources from competing for subcontracts under this contract.

(End of clause)

252.225–7003 Report of Intended Performance Outside the United States.

As prescribed in 225.7203(a), use the following provision:

Report of Intended Performance Outside the United States (Apr 2003)

(a) The offeror shall submit a Report of Contract Performance Outside the United States, with its offer, if—

(1) The offer exceeds $10 million in value; and

(2) The offeror is aware that the offeror or a first-tier subcontractor intends to perform any part of the contract outside the United States and Canada that—

(i) Exceeds $500,000 in value; and

(ii) Could be performed inside the United States or Canada.

(b) Information to be reported includes that for—

(1) Subcontracts;

(2) Purchases; and

(3) Intracompany transfers when transfers originate in a foreign location.

(c) The offeror shall submit the report using—

(1) DD Form 2139, Report of Contract Performance Outside the United States; or

(2) A computer-generated report that contains all information required by DD Form 2139.

(d) The offeror may obtain a copy of DD Form 2139 from the Contracting Officer.

(End of provision)

■ 37. Section 252.225–7004 is added to read as follows:

252.225–7004 Reporting of Contract Performance Outside the United States.

As prescribed in 225.7203(b), use the following clause:

Reporting of Contract Performance Outside the United States (Apr 2003)

(a) *Reporting criteria.* Reporting under this clause is required for—

(1) Contracts exceeding $10 million in value, when any part that exceeds $500,000 in value could be performed inside the United States or Canada, but will be performed outside the United States and Canada. If the Contractor submitted the information with its offer, the Contractor need not resubmit the information unless it changes; and

(2) Contracts exceeding $500,000 in value, when any part that exceeds the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation will be performed outside the United States, unless—

(i) A foreign place of performance is the principal place of performance; and

(ii) The Contractor indicated the foreign place of performance in the Place of Performance provision of its offer.

(b) *Information required.* Information to be reported includes that for—

(1) Subcontracts;

(2) Purchases; and

(3) Intracompany transfers when transfers originate in a foreign location.

(c) *Submission of reports.* The Contractor—

(1) Shall submit reports required by paragraph (a)(1) of this clause to the Contracting Officer as soon as the information is known, with a copy to the addressee in paragraph (c)(2) of this clause. To the maximum extent practicable, the Contractor shall report information regarding a first-tier subcontractor at least 30 days before award of the subcontract;

(2) Shall submit reports required by paragraph (a)(2) of this clause within 10 days after the end of each Government quarter to: Deputy Director of Defense Procurement and Acquisition Policy (Program Acquisition and International Contracting), OUSD(AT&L)DPAP(PAIC), Washington, DC 20301–3060;

(3) Shall submit reports using—

(i) DD Form 2139, Report of Contract Performance Outside the United States; or

(ii) A computer-generated report that contains all information required by DD Form 2139; and

(4) May obtain copies of DD Form 2139 from the Contracting Officer.

(d) *Flowdown requirements.*

(1) The Contractor shall include the substance of this clause in all first-tier subcontracts exceeding $500,000, except those for commercial items, construction, ores, natural gases, utilities, petroleum products and crudes, timber (logs), or subsistence.

(2) The Contractor shall provide the number of this contract to its subcontractors for reporting purposes.

(End of clause)

252.225–7008 through 252.225–7010 [Removed and Reserved]

■ 38. Sections 252.225–7008 through 252.225–7010 are removed and reserved.

■ 39. Section 252.225–7011 is revised to read as follows:

252.225–7011 Restriction on Acquisition of Supercomputers.

As prescribed in 225.7012–3, use the following clause:

Restriction on Acquisition of Supercomputers (Apr 2003)

Supercomputers delivered under this contract shall be manufactured in the United States.

(End of clause)

■ 40. Section 252.225–7013 is added to read as follows:

252.225–7013 Duty-Free Entry.

As prescribed in 225.1101(4), use the following clause:

Duty-Free Entry (Apr 2003)

(a) *Definitions.* As used in this clause—

(1) *Customs territory of the United States* means the States, the District of Columbia, and Puerto Rico.

(2) *Eligible product* means—

(i) *Designated country end product* or *Caribbean Basin country end product* as defined in the Trade Agreements clause of this contract;

(ii) *NAFTA country end product* as defined in the Trade Agreements clause or the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program clause of this contract; or

(iii) *Canadian end product* as defined in Alternate I of the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program clause of this contract.

(3) *Qualifying country* and *qualifying country end product* have the meanings given in the Trade Agreements clause, the Buy American Act and Balance of Payments Program clause, or the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program clause of this contract.

(b) Except as provided in paragraph (i) of this clause, or unless supplies were imported into the United States before the date of this contract or the applicable subcontract, the price of this contract shall not include any amount for duty on—

(1) End items that are eligible products or qualifying country end products;

(2) Components (including, without limitation, raw materials and intermediate assemblies) produced or made in qualifying countries, that are to be incorporated in U.S.-made end products to be delivered under this contract; or

(3) Other supplies for which the Contractor estimates that duty will exceed $200 per shipment into the customs territory of the United States.

(c) The Contractor shall—

(1) Claim duty-free entry only for supplies that the Contractor intends to deliver to the Government under this contract, either as end items or components of end items; and

(2) Pay duty on supplies, or any portion thereof, that are diverted to nongovernmental use, other than—

(i) Scrap or salvage; or

(ii) Competitive sale made, directed, or authorized by the Contracting Officer.

(d) Except as the Contractor may otherwise agree, the Government will execute duty-free entry certificates and will afford such assistance as appropriate to obtain the duty-free entry of supplies—

(1) For which no duty is included in the contract price in accordance with paragraph (b) of this clause; and

(2) For which shipping documents bear the notation specified in paragraph (e) of this clause.

(e) For foreign supplies for which the Government will issue duty-free entry certificates in accordance with this clause, shipping documents submitted to Customs shall—

(1) Consign the shipments to the appropriate—

(i) Military department in care of the Contractor, including the Contractor's delivery address; or

(ii) Military installation; and

(2) Include the following information:

(i) Prime contract number and, if applicable, delivery order number.

(ii) Number of the subcontract for foreign supplies, if applicable.

(iii) Identification of the carrier.

(iv) (A) For direct shipments to a U.S. military installation, the notation: ''UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE Duty-Free Entry to be claimed pursuant to Section XXII, Chapter 98, Subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States. Upon arrival of shipment at the appropriate port of entry, District Director of Customs, please release shipment under 19 CFR part 142 and notify Commander, Defense Contract Management Agency (DCMA) New York, ATTN: Customs Team, DCMAE–GNTF, 207 New York Avenue, Staten Island, New York, 10305–5013, for execution of Customs Form 7501, 7501A, or 7506 and any required duty-free entry certificates.''

(B) If the shipment will be consigned to other than a military installation, *e.g.*, a domestic contractor's plant, the shipping document notation shall be altered to include the name and address of the contractor, agent, or broker who will notify Commander, DCMA New York, for execution of the duty-free entry certificate. (If the shipment will be consigned to a contractor's plant and no duty-free entry certificate is required due to NAFTA or another trade agreement, the Contractor shall claim duty-free entry under NAFTA or the applicable trade agreement and shall comply with the U.S. Customs Service requirements. No notification to Commander, DCMA New York, is required.)

(v) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight).

(vi) Estimated value in U.S. dollars.

(vii) Activity address number of the contract administration office administering the prime contract, *e.g.*, for DCMA Dayton, S3605A.

(f) *Preparation of customs forms.*

(1)(i) Except for shipments consigned to a military installation, the Contractor shall—

(A) Prepare any customs forms required for the entry of foreign supplies into the United States in connection with this contract; and

(B) Submit the completed customs forms to the District Director of Customs, with a copy to DCMA NY for execution of any required duty-free entry certificates.

(ii) Shipments consigned directly to a military installation will be released in accordance with sections 10.101 and 10.102 of the U.S. Customs regulations.

(2) For shipments containing both supplies that are to be accorded duty-free entry and supplies that are not, the Contractor shall identify on the customs forms those items that are eligible for duty-free entry.

(g) The Contractor shall—

(1) Prepare (if the Contractor is a foreign supplier), or shall instruct the foreign supplier to prepare, a sufficient number of copies of the bill of lading (or other shipping document) so that at least two of the copies accompanying the shipment will be available for use by the District Director of Customs at the port of entry;

(2) Consign the shipment as specified in paragraph (e) of this clause; and

(3) Mark on the exterior of all packages—

(i) ''UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE''; and

(ii) The activity address number of the contract administration office administering the prime contract.

(h) The Contractor shall notify the Administrative Contracting Officer (ACO) in writing of any purchase of qualifying country supplies to be accorded duty-free entry, that are to be imported into the United States for delivery to the Government or for incorporation in end items to be delivered to the Government. The Contractor shall furnish the notice to the ACO immediately upon award to the qualifying country supplier and shall include in the notice—

(1) The Contractor's name, address, and Commercial and Government Entity (CAGE) code;

(2) Prime contract number and, if applicable, delivery order number;

(3) Total dollar value of the prime contract or delivery order;

(4) Date of the last scheduled delivery under the prime contract or delivery order;

(5) Foreign supplier's name and address;

(6) Number of the subcontract for foreign supplies;

(7) Total dollar value of the subcontract for foreign supplies;

(8) Date of the last scheduled delivery under the subcontract for foreign supplies;

(9) List of items purchased;

(10) An agreement that the Contractor will pay duty on supplies, or any portion thereof, that are diverted to nongovernmental use other than—

(i) Scrap or salvage; or

(ii) Competitive sale made, directed, or authorized by the Contracting Officer;

(11) Qualifying country of origin; and

(12) Scheduled delivery date(s).

(i) This clause does not apply to purchases of qualifying country supplies in connection with this contract if—

(1) The supplies are identical in nature to supplies purchased by the Contractor or any subcontractor in connection with its commercial business; and

(2) It is not economical or feasible to account for such supplies so as to ensure that the amount of the supplies for which duty-free entry is claimed does not exceed the amount purchased in connection with this contract.

(j) The Contractor shall—

(1) Insert the substance of this clause, including this paragraph (j), in all subcontracts for—

(i) Qualifying country components; or

(ii) Nonqualifying country components for which the Contractor estimates that duty will exceed $200 per unit;

(2) Require subcontractors to include the number of this contract on all shipping documents submitted to Customs for supplies for which duty-free entry is claimed pursuant to this clause; and

(3) Include in applicable subcontracts—

(i) The name and address of the ACO for this contract;

(ii) The name, address, and activity address number of the contract administration office specified in this contract; and

(iii) The information required by paragraphs (h)(1), (2), and (3) of this clause.

(End of clause)

■ 41. Sections 252.225–7014 through 252.225–7016 are revised to read as follows:

252.225–7014 Preference for Domestic Specialty Metals.

As prescribed in 225.7002–3(b)(1), use the following clause:

Preference for Domestic Specialty Metals (Apr 2003)

(a) *Definitions.* As used in this clause—

(1) *Qualifying country* means any country listed in subsection 225.872–1 of the Defense Federal Acquisition Regulation Supplement.

(2) *Specialty metals* means—

(i) Steel—

(A) With a maximum alloy content exceeding one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent; or

(B) Containing more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium;

(ii) Metal alloys consisting of nickel, iron-nickel, and cobalt base alloys containing a total of other alloying metals (except iron) in excess of 10 percent;

(iii) Titanium and titanium alloys; or

(iv) Zirconium and zirconium base alloys.

(b) Any specialty metals incorporated in articles delivered under this contract shall be melted in the United States, its possessions, or Puerto Rico.

(c) This clause does not apply to specialty metals—

(1) Melted in a qualifying country or incorporated in an article manufactured in a qualifying country; or

(2) Purchased by a subcontractor at any tier.

(End of clause)

Alternate I (Apr 2003)

As prescribed in 225.7002–3(b)(2), substitute the following paragraph (c) for paragraph (c) of the basic clause, and add the following paragraph (d) to the basic clause:

(c) This clause does not apply to specialty metals melted in a qualifying country or incorporated in an article manufactured in a qualifying country.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts for items containing specialty metals.

252.225–7015 Restriction on Acquisition of Hand or Measuring Tools.

As prescribed in 225.7002–3(c), use the following clause:

Restriction on Acquisition of Hand or Measuring Tools (Apr 2003)

Hand or measuring tools delivered under this contract shall be produced in the United States or its possessions.

(End of clause)

252.225–7016 Restriction on Acquisition of Ball and Roller Bearings.

As prescribed in 225.7009–4(a), use the following clause:

Restriction on Acquisition of Ball and Roller Bearings (Apr 2003)

(a) *Definitions.* As used in this clause—

(1) *Bearing components* means the bearing element, retainer, inner race, or outer race.

(2) *Miniature and instrument ball bearings* means all rolling contact ball bearings with a basic outside diameter (exclusive of flange diameters) of 30 millimeters or less, regardless of material, tolerance, performance, or quality characteristics.

(b) Except as provided in paragraph (c) of this clause, all ball and roller bearings and ball and roller bearing components (including miniature and instrument ball bearings) delivered under this contract, either as end items or components of end items, shall be wholly manufactured in the United States or Canada. Unless otherwise specified, raw materials, such as preformed bar, tube, or rod stock and lubricants, need not be mined or produced in the United States or Canada.

(c)(1) The restriction in paragraph (b) of this clause does not apply to ball or roller bearings that are acquired as components if—

(i) The end items or components containing ball or roller bearings are commercial items; or

(ii) The ball or roller bearings are commercial components manufactured in the United Kingdom.

(2) The commercial item exception in paragraph (c)(1) of this clause does not include items designed or developed under a Government contract if the end item is bearings or bearing components.

(d) The restriction in paragraph (b) of this clause may be waived upon request from the Contractor in accordance with subsection 225.7019–3 of the Defense Federal Acquisition Regulation Supplement. If the restriction is waived for miniature and instrument ball bearings, the Contractor shall

acquire a like quantity and type of domestic manufacture for nongovernmental use.

(e) The Contractor shall retain records showing compliance with the restriction in paragraph (b) of this clause until 3 years after final payment and shall make the records available upon request of the Contracting Officer.

(f) The Contractor shall insert the substance of this clause, including this paragraph (f), in all subcontracts, except those for—

(1) Commercial items other than ball or roller bearings; or

(2) Items that do not contain ball or roller bearings.

(End of clause)

Alternate I (Apr 2003)

As prescribed in 225.7009–4(b), substitute the following paragraph (c)(1)(ii) for paragraph (c)(1)(ii) of the basic clause:

(c)(1)(ii) The ball or roller bearings are commercial components.

252.225–7017 [Removed and Reserved]

■ 42. Section 252.225–7017 is removed and reserved.

■ 43. Sections 252.225–7018 through 252.225–7021 are revised to read as follows:

252.225–7018 Notice of Prohibition of Certain Contracts with Foreign Entities for the Conduct of Ballistic Missile Defense Research, Development, Test, and Evaluation.

As prescribed in 225.7017–4, use the following provision:

Notice of Prohibition of Certain Contracts With Foreign Entities for the Conduct of Ballistic Missile Defense Research, Development, Test, and Evaluation (Apr 2003)

(a) *Definitions.*

(1) *Competent* means the ability of an offeror to satisfy the requirements of the solicitation. This determination is based on a comprehensive assessment of each offeror's proposal including consideration of the specific areas of evaluation criteria in the relative order of importance described in the solicitation.

(2) *Foreign firm* means a business entity owned or controlled by one or more foreign nationals or a business entity in which more than 50 percent of the stock is owned or controlled by one or more foreign nationals.

(3) *U.S. firm* means a business entity other than a foreign firm.

(b) Except as provided in paragraph (c) of this provision, the Department of Defense will not enter into or carry out any contract, including any contract awarded as a result of a broad agency announcement, with a foreign government or firm if the contract provides for the conduct of research, development, test, or evaluation in connection with the Ballistic Missile Defense Program. However, foreign governments and firms are encouraged to submit offers, since this provision is not intended to restrict access to unique foreign expertise if the contract will require a level of competency unavailable in the United States.

(c) This prohibition does not apply to a foreign government or firm if—

(1) The contract will be performed within the United States;

(2) The contract is exclusively for research, development, test, or evaluation in connection with antitactical ballistic missile systems;

(3) The foreign government or firm agrees to share a substantial portion of the total contract cost. The foreign share is considered substantial if it is equitable with respect to the relative benefits that the United States and the foreign parties will derive from the contract. For example, if the contract is more beneficial to the foreign party, its share of the costs should be correspondingly higher; or

(4) The U.S. Government determines that a U.S. firm cannot competently perform the contract at a price equal to or less than the price at which a foreign government or firm can perform the contract.

(d) The offeror (____) is (____) is not a U.S. firm.

(End of provision)

252.225–7019 Restriction on Acquisition of Anchor and Mooring Chain.

As prescribed in 225.7007–3, use the following clause:

Restriction on Acquisition of Anchor and Mooring Chain (Apr 2003)

(a) Welded shipboard anchor and mooring chain, four inches or less in diameter, delivered under this contract—

(1) Shall be manufactured in the United States, including cutting, heat treating, quality control, testing, and welding (both forging and shot blasting process); and

(2) The cost of the components manufactured in the United States shall exceed 50 percent of the total cost of components.

(b) The Contractor may request a waiver of this restriction if adequate domestic supplies meeting the requirements in paragraph (a) of this clause are not available to meet the contract delivery schedule.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts for items containing welded shipboard anchor and mooring chain, four inches or less in diameter.

(End of clause)

252.225–7020 Trade Agreements Certificate.

As prescribed in 225.1101(5), use the following provision:

Trade Agreements Certificate (Apr 2003)

(a) *Definitions. Caribbean Basin country end product, designated country end product, NAFTA country end product, nondesignated country end product, qualifying country end product,* and *U.S. -made end product* have the meanings given in the Trade Agreements clause of this solicitation.

(b) *Evaluation.* The Government—

(1) Will evaluate offers in accordance with the policies and procedures of Part 225 of the Defense Federal Acquisition Regulation Supplement; and

(2) Will consider only offers of end products that are U.S.-made, qualifying country, designated country, Caribbean Basin country, or NAFTA country end products, unless the Government determines that—

(i) There are no offers of such end products;

(ii) The offers of such end products are insufficient to fulfill the Government's requirements; or

(iii) A national interest exception to the Trade Agreements Act applies.

(c) *Certification and identification of country of origin.*

(1) For all line items subject to the Trade Agreements clause of this solicitation, the offeror certifies that each end product to be delivered under this contract, except those listed in paragraph (c)(2) of this provision, is a U.S.-made, qualifying country, designated country, Caribbean Basin country, or NAFTA country end product.

(2) The following supplies are other nondesignated country end products:

_____

(Line Item Number)

_____

(Country of Origin)

(End of provision)

252.225–7021 Trade Agreements.

As prescribed in 225.1101(6), use the following clause:

Trade Agreements (Apr 2003)

(a) *Definitions.* As used in this clause—

(1) *Caribbean Basin country* means—

Antigua and Barbuda
Aruba
Bahamas
Barbados
Belize
British Virgin Islands
Costa Rica
Dominica
El Salvador
Grenada
Guatemala
Guyana
Haiti
Honduras
Jamaica
Montserrat
Netherlands Antilles
Nicaragua
St. Kitts-Nevis
St. Lucia
St. Vincent and the Grenadines
Trinidad and Tobago

(2) *Caribbean Basin country end product*—

(i) Means an article that—

(A) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(B) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself; and

(ii) Excludes products, other than petroleum and any product derived from petroleum, that are not granted duty-free treatment under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(b)). These exclusions presently consist of—

(A) Textiles, apparel articles, footwear, handbags, luggage, flat goods, work gloves, leather wearing apparel, and handloomed, handmade, or folklore articles that are not granted duty-free status in the Harmonized Tariff Schedule of the United States (HTSUS);

(B) Tuna, prepared or preserved in any manner in airtight containers; and

(C) Watches and watch parts (including cases, bracelets, and straps) of whatever type, including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the HTSUS column 2 rates of duty (HTSUS General Note 3(b)) apply.

(3) *Component* means an article, material, or supply incorporated directly into an end product.

(4) *Designated country* means—

Aruba
Austria
Bangladesh
Belgium
Benin
Bhutan
Botswana
Burkina Faso
Burundi
Canada
Cape Verde
Central African Republic
Chad
Comoros
Denmark
Djibouti
Equatorial Guinea
Finland
France
Gambia
Germany
Greece
Guinea
Guinea-Bissau
Haiti
Hong Kong
Iceland
Ireland
Israel
Italy
Japan
Kiribati
Lesotho
Liechtenstein
Luxembourg
Malawi
Maldives
Mali
Mozambique
Nepal
Netherlands
Niger
Norway
Portugal
Republic of Korea
Rwanda
Sao Tome and Principe
Sierra Leone
Singapore
Somalia
Spain
Sweden
Switzerland
Tanzania U.R.
Togo
Tuvalu
Uganda
United Kingdom
Vanuatu
Western Samoa
Yemen

(5) *Designated country end product* means an article that—

(i) Is wholly the growth, product, or manufacture of the designated country; or

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a designated country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(6) *End product* means those articles, materials, and supplies to be acquired under this contract for public use.

(7) *NAFTA country end product* means an article that—

(i) Is wholly the growth, product, or manufacture of a NAFTA country; or

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(8) *Nondesignated country end product* means any end product that is not a U.S.-made end product or a designated country end product.

(9) *North American Free Trade Agreement (NAFTA) country* means Canada or Mexico.

(10) *Qualifying country* means any country set forth in subsection 225.872–1 of the Defense Federal Acquisition Regulation Supplement.

(11) *Qualifying country end product* means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if the cost of the following types of components exceeds 50 percent of the cost of all its components:

(A) Components mined, produced, or manufactured in a qualifying country.

(B) Components mined, produced, or manufactured in the United States.

(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States.

(12) *United States* means the United States, its possessions, Puerto Rico, and any other place subject to its jurisdiction, but does not include leased bases or trust territories.

(13) *U.S.-made end product* means an article that—

(i) Is mined, produced, or manufactured in the United States; or

(ii) Is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

(b) This clause implements the Trade Agreements Act of 1979 (19 U.S.C. 2501, *et seq.*), the North American Free Trade Agreement Implementation Act of 1993 (19 U.S.C. 3301 note), and the Caribbean Basin Initiative. Unless otherwise specified, this clause applies to all items in the Schedule.

(c) The Contractor shall deliver under this contract only U.S.-made, qualifying country, designated country, Caribbean Basin country, or NAFTA country end products unless—

(1) In its offer, the Contractor specified delivery of other nondesignated country end products in the Trade Agreements Certificate provision of the solicitation; and

(2) The Government determines that—

(i) Offers of U.S.-made end products or qualifying, designated, Caribbean Basin, or NAFTA country end products from responsive, responsible offerors are either not received or are insufficient to fill the Government's requirements; or

(ii) A national interest exception to the Trade Agreements Act applies.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(e) The HTSUS is available on the Internet at *http://www.customs.ustreas.gov/impoexpo/impoexpo.htm.* The following sections of the HTSUS provide information regarding duty-free status of articles specified in paragraph (a)(2)(ii)(A) of this clause:

(1) General Note 3(c), Products Eligible for Special Tariff Treatment.

(2) General Note 17, Products of Countries Designated as Beneficiary Countries Under the United States—Caribbean Basin Trade Partnership Act of 2000.

(3) Section XXII, Chapter 98, Subchapter II, Articles Exported and Returned, Advanced or Improved Abroad, U.S. Note 7(b).

(4) Section XXII, Chapter 98, Subchapter XX, Goods Eligible for Special Tariff Benefits Under the United States—Caribbean Basin Trade Partnership Act.

(End of clause)

252.225–7022 [Amended]

■ 44. Section 252.225–7022 is amended by revising the clause date to read ''(APR 2003)''; and in paragraph (a) by removing ''only''.

252.225–7023 [Amended]

■ 45. Section 252.225–7023 is amended in the introductory text by removing ''225.7020–4'' and adding in its place ''225.7010–4''.

252.225–7024 [Removed and Reserved]

■ 46. Section 252.225–7024 is removed and reserved.

■ 47. Section 252.225–7025 is revised to read as follows:

252.225–7025 Restriction on Acquisition of Forgings.

As prescribed in 225.7102–4, use the following clause:

Restriction on Acquisition of Forgings (Apr 2003)

(a) *Definitions.* As used in this clause—

(1) *Domestic manufacture* means manufactured in the United States or Canada if the Canadian firm—

(i) Normally produces similar items or is currently producing the item in support of DoD contracts (as a contractor or a subcontractor); and

(ii) Agrees to become (upon receiving a contract/order) a planned producer under DoD's Industrial Preparedness Production Planning Program, if it is not already a planned producer for the item.

(2) *Forging items* means—

Items	Categories
Ship propulsion shafts	Excludes service and landing craft shafts.
Periscope tubes	All.
Ring forgings for bull gears.	All greater than 120 inches in diameter.

(b) End items and their components delivered under this contract shall contain forging items that are of domestic manufacture only.

(c) The restriction in paragraph (b) of this clause may be waived upon request from the Contractor in accordance with subsection 225.7102–3 of the Defense Federal Acquisition Regulation Supplement.

(d) The Contractor shall retain records showing compliance with the restriction in paragraph (b) of this clause until 3 years after final payment and shall make the records available upon request of the Contracting Officer.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e), in subcontracts for forging items or for other items that contain forging items.

(End of clause)

252.225–7026 [Removed and Reserved]

■ 48. Section 252.225–7026 is removed and reserved.

■ 49. Sections 252.225–7027 and 252.225–7028 are revised to read as follows:

252.225–7027 Restriction on Contingent Fees for Foreign Military Sales.

As prescribed in 225.7308(a), use the following clause.

Restriction on Contingent Fees for Foreign Military Sales (Apr 2003)

(a) Except as provided in paragraph (b) of this clause, contingent fees, as defined in the Covenant Against Contingent Fees clause of this contract, are generally an allowable cost, provided the fees are paid to—

(1) A bona fide employee of the Contractor; or

(2) A bona fide established commercial or selling agency maintained by the Contractor for the purpose of securing business.

(b) For foreign military sales, unless the contingent fees have been identified and payment approved in writing by the foreign customer before contract award, the following contingent fees are unallowable under this contract:

(1) For sales to the Government(s) of _____, contingent fees in any amount.

(2) For sales to Governments not listed in paragraph (b)(1) of this clause, contingent fees exceeding $50,000 per foreign military sale case.

(End of clause)

252.225–7028 Exclusionary Policies and Practices of Foreign Governments.

As prescribed in 225.7308(b), use the following clause:

Exclusionary Policies and Practices of Foreign Governments (Apr 2003)

The Contractor and its subcontractors shall not take into account the exclusionary policies or practices of any foreign government in employing or assigning personnel, if—

(a) The personnel will perform functions required by this contract, either in the United States or abroad; and

(b) The exclusionary policies or practices of the foreign government are based on race, religion, national origin, or sex.

(End of clause)

252.225–7029 [Removed and Reserved]

■ 50. Section 252.225–7029 is removed and reserved.

■ 51. Sections 252.225–7030 through 252.225–7033 are revised to read as follows:

252.225–7030 Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate.

As prescribed in 225.7011–3, use the following clause:

Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate (Apr 2003)

Carbon, alloy, and armor steel plate shall be melted and rolled in the United States or Canada if the carbon, alloy, or armor steel plate—

(a) Is in Federal Supply Class 9515 or is described by specifications of the American Society for Testing Materials or the American Iron and Steel Institute; and

(b) Will be delivered to the Government or will be purchased by the Contractor as a raw material for use in a Government-owned facility or a facility under the control of the Department of Defense.

(End of clause)

252.225–7031 Secondary Arab Boycott of Israel.

As prescribed in 225.1103(2), use the following provision:

Secondary Arab Boycott of Israel (Apr 2003)

(a) *Definitions.* As used in this provision—

(1) *Foreign person* means any person (including any individual, partnership, corporation, or other form of association) other than a United States person.

(2) *United States person* is defined in 50 U.S.C. App. 2415(2) and means—

(i) Any United States resident or national (other than an individual resident outside the United States who is employed by other than a United States person);

(ii) Any domestic concern (including any permanent domestic establishment of any foreign concern); and

(iii) Any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern that is controlled in fact by such domestic concern.

(b) *Certification.* If the offeror is a foreign person, the offeror certifies, by submission of an offer, that it—

(1) Does not comply with the Secondary Arab Boycott of Israel; and

(2) Is not taking or knowingly agreeing to take any action, with respect to the Secondary Boycott of Israel by Arab countries, which 50 U.S.C. App. 2407(a) prohibits a United States person from taking.

(End of provision)

252.225–7032 Waiver of United Kingdom Levies—Evaluation of Offers.

As prescribed in 225.1101(7), use the following provision:

Waiver of United Kingdom Levies—Evaluation of Offers (Apr 2003)

(a) Offered prices for contracts or subcontracts with United Kingdom (U.K.) firms may contain commercial exploitation levies assessed by the Government of the U.K. The offeror shall identify to the Contracting Officer all levies included in the offered price by describing—

(1) The name of the U.K. firm;

(2) The item to which the levy applies and the item quantity; and

(3) The amount of levy plus any associated indirect costs and profit or fee.

(b) In the event of difficulty in identifying levies included in a price from a prospective subcontractor, the offeror may seek advice through the Director of Procurement, United Kingdom Defence Procurement Office, British Embassy, 3100 Massachusetts Avenue NW., Washington, DC 20006.

(c) The U.S. Government may attempt to obtain a waiver of levies pursuant to the U.S./U.K. reciprocal waiver agreement of July 1987.

(1) If the U.K. waives levies before award of a contract, the Contracting Officer will evaluate the offer without the levy.

(2) If levies are identified but not waived before award of a contract, the Contracting Officer will evaluate the offer inclusive of the levies.

(3) If the U.K. grants a waiver of levies after award of a contract, the U.S. Government reserves the right to reduce the contract price by the amount of the levy waived plus associated indirect costs and profit or fee.

(End of provision)

252.225–7033 Waiver of United Kingdom Levies.

As prescribed in 225.1101(8), use the following clause:

Waiver of United Kingdom Levies (Apr 2003)

(a) The U.S. Government may attempt to obtain a waiver of any commercial exploitation levies included in the price of this contract, pursuant to the U.S./United Kingdom (U.K.) reciprocal waiver agreement of July 1987. If the U.K. grants a waiver of levies included in the price of this contract, the U.S. Government reserves the right to reduce the contract price by the amount of the levy waived plus associated indirect costs and profit or fee.

(b) If the Contractor contemplates award of a subcontract exceeding $1 million to a U.K. firm, the Contractor shall provide the following information to the Contracting Officer before award of the subcontract:

(1) Name of the U.K. firm.

(2) Prime contract number.

(3) Description of item to which the levy applies.

(4) Quantity being acquired.

(5) Amount of levy plus any associated indirect costs and profit or fee.

(c) In the event of difficulty in identifying levies included in a price from a prospective subcontractor, the Contractor may seek advice through the Director of Procurement, United Kingdom Defence Procurement Office, British Embassy, 3100 Massachusetts Avenue NW., Washington, DC 20006.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in any subcontract for supplies where a lower-tier subcontract exceeding $1 million with a U.K. firm is anticipated.

(End of clause)

■ 52. Sections 252.225–7035 through 252.225–7039 are revised to read as follows:

252.225–7035 Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate.

As prescribed in 225.1101(9), use the following provision:

Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate (Apr 2003)

(a) *Definitions. Domestic end product, foreign end product, NAFTA country end product, qualifying country end product,* and *United States* have the meanings given in the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program clause of this solicitation.

(b) *Evaluation.* The Government—

(1) Will evaluate offers in accordance with the policies and procedures of Part 225 of the Defense Federal Acquisition Regulation Supplement; and

(2) For line items subject to the North American Free Trade Agreement Implementation Act, will evaluate offers of qualifying country end products or NAFTA country end products without regard to the restrictions of the Buy American Act or the Balance of Payments Program.

(c) *Certifications and identification of country of origin.*

(1) For all line items subject to the Buy American Act-North American Free Trade Agreement Implementation Act-Balance of Payments Program clause of this solicitation, the offeror certifies that—

(i) Each end product, except the end products listed in paragraph (c)(2) of this provision, is a domestic end product; and

(ii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The offeror shall identify all end products that are not domestic end products.

(i) The offeror certifies that the following supplies are qualifying country (except Canadian) end products:

_____

(Line Item Number)

_____

(Country of Origin)

(ii) The offeror certifies that the following supplies are NAFTA country end products:

_____

(Line Item Number)

_____

(Country of Origin)

(iii) The following supplies are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products.

_____

(Line Item Number)

_____

(Country of Origin (If known))

(End of provision)

Alternate I (Apr 2003)

As prescribed in 225.1101(9), substitute the phrase ''Canadian end product'' for the phrase ''NAFTA country end product'' in paragraph (a) of the basic provision; and substitute the phrase ''Canadian end products'' for the phrase ''NAFTA country end products'' in paragraphs (b) and (c)(2)(ii) of the basic provision.

252.225–7036 Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program.

As prescribed in 225.1101(10)(i), use the following clause:

Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program (Apr 2003)

(a) *Definitions.* As used in this clause—

(1) *Component* means an article, material, or supply incorporated directly into an end product.

(2) *Domestic end product* means—

(i) An unmanufactured end product that has been mined or produced in the United States; or

(ii) An end product manufactured in the United States if the cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

(A) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(B) It is inconsistent with the public interest to apply the restrictions of the Buy American Act.

(3) *End product* means those articles, materials, and supplies to be acquired under this contract for public use.

(4) *Foreign end product* means an end product other than a domestic end product.

(5) *North American Free Trade Agreement (NAFTA) country* means Canada or Mexico.

(6) *NAFTA country end product* means an article that—

(i) Is wholly the growth, product, or manufacture of a NAFTA country; or

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use

distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(7) *Qualifying country* means any country set forth in subsection 225.872–1 of the Defense Federal Acquisition Regulation Supplement.

(8) *Qualifying country component* means a component mined, produced, or manufactured in a qualifying country.

(9) *Qualifying country end product* means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if the cost of the following types of components exceeds 50 percent of the cost of all its components:

(A) Components mined, produced, or manufactured in a qualifying country.

(B) Components mined, produced, or manufactured in the United States.

(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States.

(10) *United States* means the United States, its possessions, Puerto Rico, and any other place subject to its jurisdiction, but does not include leased bases or trust territories.

(b) This clause implements the Buy American Act (41 U.S.C. Section 10a–d), the Balance of Payments Program, and the North American Free Trade Agreement Implementation Act of 1993 (19 U.S.C. 3301 note). Unless otherwise specified, this clause applies to all items in the Schedule.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country, NAFTA country, or other foreign end products in the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product or a NAFTA country end product, the Contractor shall deliver a qualifying country end product, a NAFTA country end product, or, at the Contractor's option, a domestic end product.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(End of clause)

Alternate I (Apr 2003)

As prescribed in 225.1101(10)(i)(B), substitute the following paragraphs (a)(6) and (c) for paragraphs (a)(6) and (c) of the basic clause:

(a)(6) *Canadian end product* means an article that—

(i) Is wholly the growth, product, or manufacture of Canada; or

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country, Canadian, or other foreign end products in the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product or a Canadian end product, the Contractor shall deliver a qualifying country end product, a Canadian end product, or, at the Contractor's option, a domestic end product.

252.225–7037 Evaluation of Offers for Air Circuit Breakers.

As prescribed in 225.7006–4(a), use the following provision:

Evaluation of Offers for Air Circuit Breakers (Apr 2003)

(a) The offeror shall specify, in its offer, any intent to furnish air circuit breakers that are not manufactured in the United States, Canada, or the United Kingdom.

(b) The Contracting Officer will evaluate offers by adding a factor of 50 percent to the offered price of air circuit breakers that are not manufactured in the United States, Canada, or the United Kingdom.

(End of provision)

252.225–7038 Restriction on Acquisition of Air Circuit Breakers.

As prescribed in 225.7006–4(b), use the following clause:

Restriction on Acquisition of Air Circuit Breakers (Apr 2003)

Unless otherwise specified in its offer, the Contractor shall deliver under this contract air circuit breakers manufactured in the United States, Canada, or the United Kingdom.

(End of clause)

252.225–7039 Restriction on Acquisition of Totally Enclosed Lifeboat Survival Systems.

As prescribed in 225.7008–4, use the following clause:

Restriction on Acquisition of Totally Enclosed Lifeboat Survival Systems (Apr 2003)

The Contractor shall deliver under this contract totally enclosed lifeboat survival systems (consisting of the lifeboat and associated davits and winches), for which—

(a) 50 percent or more of the components have been manufactured in the United States; and

(b) 50 percent or more of the labor in the manufacture and assembly of the entire system has been performed in the United States.

(End of clause)

252.225–7041 [Amended]

■ 53. Section 252.225–7041 is amended in the introductory text by removing ''225.1103(2)'' and adding in its place ''225.1103(3)''.

■ 54. Section 252.225–7042 is revised to read as follows:

252.225–7042 Authorization to Perform.

As prescribed in 225.1103(4), use the following provision:

Authorization to Perform (Apr 2003)

The offeror represents that it has been duly authorized to operate and to do business in the country or countries in which the contract is to be performed.

(End of provision)

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Part V

Department of Education

Early Childhood Educator Professional Development Program; Notice of Final Achievement Indicators and Invitation for Applications for New Awards for Fiscal Year 2003; Notices

DEPARTMENT OF EDUCATION

[CFDA NO: 84.349A]

Early Childhood Educator Professional Development Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003

Purpose of Program

The purpose of the Early Childhood Educator Professional Development Program, authorized by section 2151(e) of the Elementary and Secondary Education Act (ESEA) as added by the No Child Left Behind Act, Public Law 107–110, is to enhance the school readiness of young children, particularly disadvantaged young children, and to prevent them from encountering difficulties once they enter school. The program is designed to improve the knowledge and skills of early childhood educators who work in communities that have high concentrations of children living in poverty.

Projects funded under the Early Childhood Educator Professional Development Program provide high-quality, sustained, and intensive professional development for these early childhood educators in how to provide developmentally appropriate school-readiness services for preschool-age children that are based on the best available research on early childhood pedagogy and on child development and learning, including the age-appropriate development of oral language, phonological awareness, print awareness, alphabet knowledge, and numeracy skills. These grants are part of the President's early childhood initiative, ''Good Start, Grow Smart,'' and complement other early learning grant programs, such as Early Reading First, by helping States and local communities strengthen early learning for young children. The Department intends to disseminate information about the funded projects that prove to be effective professional development.

Eligible Applicants

A partnership consisting of at least one entity from each of the following categories, as indicated below—

(i) One or more institutions of higher education, or other public or private entities (including faith-based organizations), that provide professional development for early childhood educators who work with children from low-income families in high-need communities; and

(ii) One or more public agencies (including local educational agencies, State educational agencies, State human services agencies, and State and local agencies administering programs under the Child Care and Development Block Grant Act of 1990), Head Start agencies, or private organizations (including faith-based organizations); and

(iii) If feasible, an entity with demonstrated experience in providing training to educators in early childhood education programs concerning identifying and preventing behavior problems or working with children identified as or suspected to be victims of abuse. This entity may be one of the partners described above, if appropriate.

Applications Available: March 31, 2003.

Deadline for Transmittal of Applications: May 16, 2003.

Deadline for Intergovernmental Review: July 15, 2003.

Estimated Available Funds: $14,875,000.

Estimated Range of Awards: $1,200,000–$2,800,000.

Estimated Average Size of Awards: $2,000,000.

Estimated Number of Awards: 5–12 awards.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 2 years.

Applicable Regulations: The following provisions of the Education Department General Administrative Regulations (EDGAR) apply to these Early Childhood Educator Professional Development program grants: 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99.

These regulations are available at the following Web site: *http://www.ed.gov/offices/OCFO/grants/edgar.html.*

Matching and Use of Funds Requirements

Cost-sharing: Each partnership carrying out a project through an Early Childhood Educator Professional Development Program grant under this program must provide a cost share of (1) at least 50 percent of the total cost of the project for the entire grant period; and (2) at least 20 percent of the project cost for each year. The project may provide this cost share from any source other than funds under this program, including other Federal sources.

The partnership may provide the project cost share through contributions of cash or in-kind, fairly evaluated, including plant, equipment, and services. Only allowable costs may be counted as part of the cost share. For example, any indirect costs over and above the allowable amount (see ''Indirect Costs'' section under this heading) may not be counted toward a grantee's cost share.

Indirect Costs: For purposes of indirect cost charges, the Secretary considers all Early Childhood Educator Professional Development Program grants to be ''educational training grants'' within the meaning of section 75.562(a) of EDGAR (34 CFR 75.562(a)). Consistent with 34 CFR 75.562, the indirect cost rate for any fiscal agent other than a State agency or agency of local government (such as a local educational agency) is limited to a maximum of eight percent or the amount permitted by the fiscal agent's negotiated indirect cost rate agreement, whichever is less. Further information about indirect cost rates, and on how to apply for a negotiated indirect cost rate for fiscal agents that do not yet have one, is available at the following Web site: *http://www.ed.gov/offices/OCFO/FIPAO/icgindex.html.*

Pre-award Costs: The Department's regulations authorize grant recipients to incur allowable pre-award costs up to 90 calendar days before the grant award (sections 75.263 and 74.25(e)(1) of EDGAR, 34 CFR 75.263 and 74.25(e)(1)). In this case, pre-award costs may include the necessary and reasonable costs of the needs assessment that the statute requires applicants to conduct before submitting their applications, to determine the most critical professional development needs of the early childhood educators to be served by the project and in the broader community. The Secretary extends the period for recipients to charge necessary and reasonable pre-award costs incurred related to the needs assessment for these grants for up to 90 days before the application due date. Applicants incur any pre-award costs at their own risk. That is, the Secretary is under no obligation to reimburse these costs if for any reason the applicant does not receive an award or if the award is less than anticipated and inadequate to cover these costs.

SUPPLEMENTARY INFORMATION:

Background

These Early Childhood Educator Professional Development Program grants will provide a small but significant base of high-quality, intensive, replicable, professional development programs for early childhood educators. These programs will be based on the best available research on both effective adult professional development approaches, and on early childhood pedagogy and on child development and learning, including the age-appropriate development of oral language, phonological awareness, print

awareness, alphabet knowledge, and numeracy skills. The grants are particularly important because there is a critical need for more high-quality, intensive, research-based professional development programs for early childhood educators to enable them to help young children better develop the knowledge, skills, and dispositions necessary for school readiness.

These grants will fund projects that carry out activities to improve the knowledge and skills of early childhood educators working in early childhood programs that are located in high-need communities. Under the invitational priority identified in this notice, the Secretary is particularly interested in proposals that focus on providing professional development for early childhood educators to work with children who have limited English proficiency, children with disabilities as identified under Parts B or C of the Individuals with Disabilities Education Act, and children with other special needs. An application that meets this invitational priority, however, receives no competitive or absolute preference over applications that do not meet the priority.

The specific activities for which recipients may use grant funds are identified in the application package. The Secretary will expect funded projects to use rigorous methodologies to measure progress toward attaining project objectives and the final achievement indicators that are described in this notice under **Achievement Indicators.**

Definitions

The following terms used in the application package for this grant competition have specific statutory meanings that are included in that package: ''child with a disability,'' ''early childhood educator,'' ''high-need community,'' ''low-income family,'' ''poverty line,'' ''professional development,'' and ''scientifically based research.'' The Secretary strongly encourages applicants to review the statutory definitions of these terms before preparing their grant applications.

Applications

Early Childhood Educator Professional Development Program grants for FY 2003 will be awarded through a competitive process. The statute requires each applicant to submit an application that contains specific information and assurances that are described in the application package. Applicants must meet a statutory requirement to be eligible for consideration for funding, and must address the selection criteria from section 75.210 of EDGAR that are identified in the application package. The application narrative addressing the statutory requirement, the selection criteria, and other information identified in the application package is limited to 30 double-spaced, typed pages. The Appendices, including the required Partnership Agreement, are not part of this page limit. The additional budget narrative is limited to 5 double-spaced, typed pages. Other application materials are limited to the specific materials indicated in the application package, and may not include any video or other non-print materials.

Achievement Indicators

On January 6, 2003, the Secretary published in the **Federal Register** (68 FR 547–548) proposed achievement indicators for these grants. After receiving public comment, the Secretary now is publishing the following final achievement indicators in accordance with section 2151(e)(6) of the ESEA, elsewhere in this issue of the **Federal Register**. That Notice of Final Achievement Indicators contains the Secretary's response to submitted public comments to the proposed achievement indicators. The Notice of Final Achievement Indicators also is posted on the Department's website at the following address: *http://www.ed.gov/offices/OESE/SASA/ecprofdev.html.*

These final achievement indicators will govern these FY 2003 grants. Applicants must describe in their applications how their project objectives and measurement methods are aligned with these final achievement indicators, and report annually on their progress toward attaining these indicators.

Final Achievement Indicators

In accordance with the timeline included in the approved application:

Indicator 1: Projects will offer an increasing number of hours of high-quality professional development to early childhood educators. High-quality professional development is ongoing, intensive, classroom-focused, and based on scientific research on early childhood cognitive and social development, including the age-appropriate development of oral language, phonological awareness, print awareness, alphabet knowledge, and numeracy skills, and on effective pedagogy for young children. High-quality professional development also includes instruction in the effective administration of age-appropriate assessments of young children and the use of assessment results.

Indicator 2: Early childhood educators who work in early childhood programs serving low-income children will participate in greater numbers, and in increasing numbers of hours, in high-quality professional development.

Indicator 3: Early childhood educators will demonstrate increased knowledge and understanding of effective strategies to support school readiness based on scientific research on cognitive and social development in early childhood and effective pedagogy for young children, and in the effective administration of age-appropriate assessments of young children and the use of assessment results.

Indicator 4: Early childhood educators will more frequently apply research-based approaches in early childhood pedagogy and child development and learning domains, including using a content-rich curriculum and activities that promote the age-appropriate development of oral language, age-appropriate social and emotional behavior, phonological awareness, print awareness, alphabet knowledge, and numeracy skills. Early childhood educators also will more frequently participate in the effective administration of age-appropriate assessments of young children and the use of assessment results.

Indicator 5: Children will demonstrate improved readiness for school, especially in the areas of appropriate social and emotional behavior and early language, literacy, and numeracy skills.

Statutory Requirement—High-Need Communities: Section 2151(e)(5)(A) of the ESEA (20 U.S.C. 6651(e)(5)(A)) requires that grant funds be used to carry out activities that will improve the knowledge and skills of early childhood educators who are working in early childhood programs that are located in high-need communities. Thus, the statute requires that each early childhood program, in which the early childhood educators work who will receive professional development under the project, must be located in a ''high-need community.'' To be considered for funding under this program, an eligible applicant must demonstrate in its application narrative how it meets this statutory requirement by including relevant demographic and socioeconomic information about those communities. ''High-need community,'' as defined in section 2151(e)(9)(B) of the ESEA, means: (a) A political subdivision of a State, or a portion of a political subdivision of a State, in which at least 50 percent of the children are from low-income families; or (b) a political subdivision of a State that is among the

10 percent of political subdivisions of the State having the greatest numbers of such children.

The Secretary will fund under this competition only applications that meet this statutory requirement.

Note: The following terms used in this statutory requirement have statutory definitions that are included in the application package: ''early childhood educator,'' ''high-need community,'' ''low-income family,'' and ''professional development.''

Invitational Priority—Special Needs Children: The Secretary is particularly interested in receiving applications that propose to focus on providing professional development for early childhood educators to work with young children who have limited English proficiency, children with disabilities as identified under parts B or C of the Individuals with Disabilities Education Act, and children with other special needs.

Note: The following term used in this invitational priority has a statutory definition that is included in the application package: ''child with a disability.''

Under section 75.105(c)(1) of EDGAR (34 CFR 75.105(c)(1)), an application that meets this invitational priority receives no competitive or absolute preference over applications that do not meet the priority.

Selection Criteria

The Secretary will use selection criteria from section 75.210 of EDGAR (34 CFR 75.210) to evaluate applications under this competition. Those selection criteria are identified in the application package. The Secretary will use the procedures in § 75.217 of EDGAR (34 CFR 75.217) to select applications for funding.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html*

Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.349A. The public also may obtain a copy of the application package on the Department's website at the following address: *http://www.ed.gov/offices/OESE/SASA/ecprofdev.html.*

FOR FURTHER INFORMATION CONTACT: Melanie Kadlic, U.S. Department of Education, Student Achievement and School Accountability Programs, Office of Elementary and Secondary Education, 400 Maryland Avenue SW., Washington, DC 20202–6132. Telephone: (202) 260–3793, or via Internet: *Melanie.Kadlic@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

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Program Authority: 20 U.S.C. 6651(e).

Dated: March 26, 2003.

Eugene W. Hickok,

Under Secretary.

[FR Doc. 03–7763 Filed 3–28–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA NO: 84.349A]

Early Childhood Educator Professional Development Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of final achievement indicators.

SUMMARY: The Under Secretary announces final achievement indicators for the Early Childhood Educator Professional Development Program, for fiscal year (FY) 2003 and future years' grants. These achievement indicators will help ensure that the professional development provided under these discretionary grants will improve the knowledge and skills of early childhood educators who work in high-poverty communities, and will enhance the school readiness of young children, particularly disadvantaged young children, to prevent them from encountering difficulties once they enter school.

EFFECTIVE DATE: These achievement indicators are effective April 30, 2003.

FOR FURTHER INFORMATION CONTACT: Melanie Kadlic, U.S. Department of Education, Office of Elementary and Secondary Education, 400 Maryland Avenue, SW., room 3C138, FB–6, Washington, DC 20202–2645. Telephone (202) 260–3793 or via Internet: *Melanie.Kadlic@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475.

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: The Early Childhood Educator Professional Development Program (ECEPD) is a discretionary grant program authorized by section 2151(e) of the Elementary and Secondary Education Act (ESEA), as added by the No Child Left Behind Act, Public Law 107–110. The ECEPD program provides funds for projects that carry out activities to improve the knowledge and skills of early childhood educators working in programs that are located in high-need communities, particularly those serving disadvantaged young children. These programs are based on the best available research on early childhood pedagogy and on child development and learning, including the age-appropriate development of oral language, phonological awareness, print awareness, alphabet knowledge, and numeracy skills. The grants serve an important purpose because high-quality, intensive, research-based professional development is critical for implementing effective early childhood programs that improve young children's readiness for school.

ECEPD grants are made to partnerships of: providers of professional development for early childhood educators; State or local public agencies or private organizations; and, if feasible, a provider experienced in training early childhood educators to identify and prevent behavior problems or work with children identified as or suspected to be victims of abuse.

Section 2151(e)(6) of the ESEA requires the Secretary to announce achievement indicators for the ECEPD program. These achievement indicators must be designed: (1) To measure the quality and accessibility of the professional development provided; (2) to measure the impact of that professional development on the early childhood education provided by the individuals who receive the professional development; and (3) to provide any other measures of program impact that the Secretary determines to be appropriate. The statute requires each partnership receiving an ECEPD grant to report annually to the Secretary on the partnership's progress toward attaining these achievement indicators. The Secretary may terminate an ECEPD grant if the Secretary determines that the partnership receiving the grant is not making satisfactory progress toward attaining the achievement indicators.

The Secretary will use these final achievement indicators for the ECEPD grant competition for FY 2003, and for future years, unless otherwise announced.

On January 6, 2003, the Secretary published a Notice of Proposed Achievement Indicators for this program (68 FR 547). These final achievement indicators are similar to those proposed indicators, with two differences. First, these final indicators will measure the extent to which projects provide professional development on the effective, age-appropriate assessment of young children. Second, these indicators clarify that research-based approaches in early childhood pedagogy and child development and learning domains include activities that promote the age-appropriate development of oral language, phonological awareness, print awareness, alphabet knowledge, and numeracy skills. These changes from the proposed indicators are explained in the Analysis of Comments and Changes in this notice.

Analysis of Comments and Changes

The Department received relevant comments from three parties in response to the Assistant Secretary's invitation to comment in the Notice of Proposed Achievement Indicators. The Department also received other comments that were not relevant to the proposed indicators. Commenters indicated their support of a number of aspects of the proposed indicators, including commending the indicators' general emphasis on child development research and high-quality professional development, supporting in particular the indicator on participation in and intensity of the professional development (Indicator 2), and supporting the indicator on using research-based approaches that include using a content-rich curriculum and activities (Indicator 4). An analysis of other relevant comments, and the Secretary's responses to those comments, is presented below. Comments are grouped according to subject.

Comment: One commenter requested that the achievement indicators include professional development in the areas of effective observation, tracking, and assessment of young children, including children with disabilities. The commenter indicated that, to ensure that content-rich curriculum and activities that promote cognitive, language, social, physical, and emotional development are achieving desired child outcomes, early childhood educators must have access to high-quality, research-based instruction and best practices in effective data gathering, tracking, assessment, and analysis of child development. The commenter indicated that professional development should include specific, targeted training in how to use, and analyze effectively, diverse valid and reliable research-based assessment instruments for young children, including those that effectively track and measure the developmental progress of children with disabilities.

Discussion: The applicable definition of ''professional development'' in section 9101(34) of the ESEA includes instruction in the use of data and assessments to inform and instruct classroom practice. The Secretary agrees that specific training for early childhood educators in the effective, age-appropriate assessment of young children is an integral part of a high-quality professional development program. This training will enable the educators to administer screening and other assessments effectively and use the results to inform instruction, and to identify children with special needs.

Change: A clarifying change has been made to the first, third, and fourth achievement indicators to clarify that the effective, age-appropriate assessment of young children is included in a high-quality professional development program.

Comment: One commenter expressed the understanding that mastery and control over a variety of teaching strategies is included in ''high-quality professional development'' in the first indicator and ''effective strategies to support school readiness'' in the third indicator.

Discussion: The Secretary agrees that high-quality professional development, and effective strategies to support school readiness, both generally require knowledge and understanding of a variety of teaching strategies to meet the diverse learning needs of all students in the classroom, including students with special needs.

Changes: None.

Comment: One commenter addressed the specific ways that children may demonstrate ''improved readiness for school'' in Indicator 5. With respect to social and emotional child behaviors, the commenter indicated that behaviors that demonstrate readiness include growth in initiative, ability to orient to and feel comfortable in a group setting, decision making, and negotiating ideas and social interactions with peers and adults. The commenter also stated that readiness in the areas of language and literacy will be demonstrated when children can show growth in the use of language to express ideas, relate to others, and explain and discuss their thinking as they investigate their surroundings.

Discussion: The Secretary believes that the indicator on how children will demonstrate improved readiness for school needs to remain broad, to provide applicants with the flexibility to be responsive in their grant proposals to their own State standards. School readiness is defined by what each child should know and be able to do by the time that child enters elementary school in the State in which that child lives. That is, early childhood education should prepare children with the knowledge, skills, and dispositions needed to meet a State's preschool standards or content guidelines, if any, and the foundational knowledge and skills that the children will need in order to meet that State's content standards when the children reach the lowest grade for which the State has elementary content standards.

Change: None.

Comment: Two commenters suggested that the achievement indicators would be stronger if they were more specific concerning content and quality of professional development. For example, one commenter suggested that achievement indicators should indicate how early childhood educators: engage children in appropriate interactions that encourage early language and cognitive development; individualize experiences for young children based on observation of children's abilities, development, and learning; and form and maintain culturally competent relationships with parents of young children served. Another commenter suggested that the achievement indicators specify the experiences in which early childhood

educators will engage children. For example, the commenter defined ''content-rich,'' as referenced in Indicator 4, to mean ''conceptually rich experiences that grow out of direct experience with concrete materials related to the disciplines of the physical and natural sciences and the social sciences.''

Discussion: High-quality professional development for early childhood education programs must be based on scientific research on early childhood cognitive and social development. The Secretary agrees that the indicators would be strengthened by indicating the specific types of early childhood developmental skills that research shows are included in early language and cognitive development, namely, the age-appropriate development of oral language, phonological awareness, print awareness, alphabet knowledge, and numeracy skills.

As provided in Indicator 4, research-based approaches in early childhood pedagogy and child development and learning domains include using a content-rich curriculum. The Secretary believes that the specific content and context of the curriculum should remain broadly defined in the indicators, however, to give applicants the flexibility to align their high-quality, research-based professional development programs with their State's preschool standards or content guidelines, if any, and to address the foundational knowledge and skills that the children will need in order to meet that State's content standards when the children reach the lowest grade for which the State has elementary content standards.

Change: Changes are made to the first and fourth indicator to clarify that research-based approaches on early childhood cognitive and social development include the age-appropriate development of oral language, phonological awareness, print awareness, alphabet knowledge, and numeracy skills. A change is made to the fifth indicator by adding numeracy to the competencies that children need to demonstrate improved readiness for school.

Achievement Indicators: The Secretary announces the following final achievement indicators for the ECEPD program, as required by section 2151(e)(6) of the ESEA.

In accordance with the timeline included in the approved application:

Indicator 1: Projects will offer an increasing number of hours of high-quality professional development to early childhood educators. High-quality professional development is ongoing, intensive, classroom-focused, and based on scientific research on early childhood cognitive and social development, including the age-appropriate development of oral language, phonological awareness, print awareness, alphabet knowledge, and numeracy skills, and on effective pedagogy for young children. High-quality professional development also includes instruction in the effective administration of age-appropriate assessments of young children and the use of assessment results.

Indicator 2: Early childhood educators who work in early childhood programs serving low-income children will participate in greater numbers, and in increasing numbers of hours, in high-quality professional development.

Indicator 3: Early childhood educators will demonstrate increased knowledge and understanding of effective strategies to support school readiness based on scientific research on cognitive and social development in early childhood and effective pedagogy for young children, and in the effective administration of age-appropriate assessments of young children and the use of assessment results.

Indicator 4: Early childhood educators will more frequently apply research-based approaches in early childhood pedagogy and child development and learning domains, including using a content-rich curriculum and activities that promote the age-appropriate development of oral language, age-appropriate social and emotional behavior, phonological awareness, print awareness, alphabet knowledge, and numeracy skills. Early childhood educators also will more frequently participate in the effective administration of age-appropriate assessments of young children and the use of assessment results.

Indicator 5: Children will demonstrate improved readiness for school, especially in the areas of appropriate social and emotional behavior and early language, literacy, and numeracy skills.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

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Program Authority: 20 U.S.C. 6651(e).

(Catalog of Federal Domestic Assistance Number 84.349A. Early Childhood Educator Professional Development Program)

Dated: March 26, 2003.

Eugene W. Hickok,

Under Secretary.

[FR Doc. 03–7762 Filed 3–28–03; 8:45 am]

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Federal Register

Monday,
March 31, 2003

Part VI

The President

Proclamation 7656—National Child Abuse Prevention Month, 2003

Federal Register
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Monday, March 31, 2003

Presidential Documents

Title 3—

The President

Proclamation 7656 of March 26, 2003

National Child Abuse Prevention Month, 2003

By the President of the United States of America

A Proclamation

Our Nation has an important responsibility to create a caring environment in which our children can flourish and reach their full potential. As we observe the 20th anniversary of National Child Abuse Prevention Month, we recognize the significant progress we have made to increase the safety and security of our children. We also renew our commitment to protecting our most vulnerable citizens from harm. Child abuse and neglect are national tragedies, and we must work together to eradicate them.

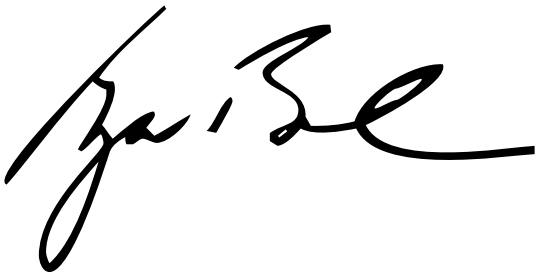
Every day, thousands of children are mistreated by their parents, guardians, relatives, or caregivers. On average, three children a day die as a result of abuse and neglect, and countless others remain silent, their pain unnoticed and unreported. These children face challenges that no child deserves, and young people who have experienced abuse may grow into adults who are self-destructive and damaging to our communities. To help these children become healthy and happy adults, parents and caregivers must provide them with love, security, emotional support, and a strong connection to their extended families and communities.

To help ensure the safety and well-being of our children, my Administration is committed to supporting and strengthening families. In the last year, we have worked with faith-based and community organizations to promote healthy marriages, responsible fatherhood, and partnerships that seek to prevent child abuse and neglect. We also worked with the Congress to reauthorize the Promoting Safe and Stable Families program. This year, we are asking the Congress to fully fund this program at $505 million, an increase of more than 65 percent. In addition, we are working with the Congress to reauthorize the Child Abuse Prevention and Treatment Act. This important legislation will provide funding to States for child abuse prevention activities and other vital programs.

Every child is a blessing. Through the cooperation of Federal, State, and local governments, faith-based and community organizations, schools, law enforcement, and health and human service agencies, we can develop and enhance successful prevention strategies that protect our young people. In addition, we must continue to recognize the spirit of compassion in individuals and community groups across our Nation that offer care, guidance, and support for young people, parents, and caregivers. By working together, we can put hope in our children's hearts and ensure healthy and safe lives for all our children.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 2003 as National Child Abuse Prevention Month. I encourage all Americans to join together to support strong families, protect our children from abuse, neglect, and maltreatment, and make our Nation a more promising place for all.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of March, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.



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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Tomatoes grown in—
- Florida; published 3-31-03

AGRICULTURE DEPARTMENT

Natural Resources Conservation Service

Support services:
- Technical service provider assistance
  - Correction; published 3-31-03

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Northeastern United States fisheries—
  - Summer flounder, scup, and black sea bass; published 3-4-03

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):
- Small disadvantaged businesses and institutions of higher education; published 3-31-03
- Technical amendments; published 3-31-03

ENVIRONMENTAL PROTECTION AGENCY

Air programs:
- Ambient air quality standards, national—
  - Particulate matter; published 12-31-02

Air programs; approval and promulgation; State plans for designated facilities and pollutants:
- Alabama; published 1-28-03

Air quality implementation plans; approval and promulgation; various States:
- California; published 2-28-03
- Connecticut; published 2-27-03
- North Dakota; published 2-28-03

FEDERAL TRADE COMMISSION

Telemarketing sales rule; published 1-29-03

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:
- Decoquinate; correction; published 3-31-03
- Gentamicin sulfate, et al.; published 3-31-03
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- Sponsor name and address changes- -
  - Bayer HealthCare LLC, Animal Helth Division; published 3-31-03

Medical devices:
- Hematology and pathology devices—
  - Automated blood cell separator device operating by filtration principle; reclassification; published 2-28-03

HOMELAND SECURITY DEPARTMENT

Coast Guard

Ports and waterways safety:
- Chesapeake Bay, Calvert County, MD; Calvert Cliffs Nuclear Power Plant; security zone; published 3-28-03

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:
- Critical habitat designations—
  - Plant species from Kauai and Niihau, HI; published 2-27-03

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Andondoned mine land reclamation:
- Notice publication requirement; published 2-27-03

SECURITIES AND EXCHANGE COMMISSION

Securities:
- Auditor independence; Commission requirements
  - Correction; published 3-31-03
- Lost securityholders; transfer agent requirements; technical amendment; published 3-25-03
- Sarbanes-Oxley Act of 2002; implementation
  - Disclosure requirements; correction; published 3-31-03

TRANSPORTATION DEPARTMENT

Computer reservation systems, carrier-owned:
- Expiration date extension; published 3-31-03

TRANSPORTATION DEPARTMENT

Federal Motor Carrier Safety Administration

Motor carrier safety standards:
- Technical amendments; published 3-31-03

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AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Olives grown in—
- California; comments due by 4-9-03; published 3-10-03 [FR 03-05561]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:
- Foot-and-mouth disease; disease status change—
  - Uruguay; comments due by 4-11-03; published 2-10-03 [FR 03-03228]

Noxious weeds:
- Kikuyu grass cultivars; comments due by 4-11-03; published 2-10-03 [FR 03-03181]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Noxious weeds:
- Witchweed; regulated areas; comments due by 4-11-03; published 2-10-03 [FR 03-03182]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, foreign:
- Wheat and related products; flag smut import prohibitions; comments due by 4-8-03; published 2-7-03 [FR 03-03057]

Plant related quarantine; domestic:
- Fire ant, imported; comments due by 4-7-03; published 2-5-03 [FR 03-02685]

AGRICULTURE DEPARTMENT

Forest Service

National Forest System land and resource management planning; comments due by 4-7-03; published 3-5-03 [FR 03-05116]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Northeastern United States fisheries—
  - Atlantic mackerel, squid, and butterfish; comments due by 4-10-03; published 3-26-03 [FR 03-07252]

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):
- Competitive acquisition; debriefing; comments due by 4-7-03; published 2-4-03 [FR 03-02580]
- Cost principles; general provisions; comments due by 4-7-03; published 2-4-03 [FR 03-02581]

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Consumer products; energy conservation program:
- Energy conservation standards and test procedures—
  - Refrigerators and refrigerator-freezers; comments due by 4-7-03; published 3-7-03 [FR 03-05405]

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Consumer products; energy conservation program:
- Energy conservation standards and test procedures—
  - Refrigerators and refrigerator-freezers; comments due by 4-7-03; published 3-7-03 [FR 03-05404]

ENVIRONMENTAL PROTECTION AGENCY

Air programs; approval and promulgation; State plans for designated facilities and pollutants:
- California; comments due by 4-10-03; published 3-11-03 [FR 03-05748]

ENVIRONMENTAL PROTECTION AGENCY

Air programs; approval and promulgation; State plans for designated facilities and pollutants:
- Indiana; comments due by 4-10-03; published 3-11-03 [FR 03-05741]

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Indiana; comments due by 4-10-03; published 3-11-03 [FR 03-05742]
New Hampshire; comments due by 4-7-03; published 3-6-03 [FR 03-05305]

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
New Hampshire; comments due by 4-7-03; published 3-6-03 [FR 03-05306]

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
New Jersey; comments due by 4-7-03; published 3-6-03 [FR 03-05320]

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
New Jersey; comments due by 4-7-03; published 3-6-03 [FR 03-05321]
Rhode Island; comments due by 4-7-03; published 3-6-03 [FR 03-05307]

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Rhode Island; comments due by 4-7-03; published 3-6-03 [FR 03-05308]
Air quality implementation plans; approval and promulgation; various States:
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ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 4-7-03; published 3-7-03 [FR 03-05326]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Iowa; comments due by 4-7-03; published 3-7-03 [FR 03-05309]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
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ENVIRONMENTAL PROTECTION AGENCY
Small Business Liability Relief and Brownfields Revitalization Act; implementation:
Federal standards for conducting all appropriate inquiry; negotiated rulemaking committee; intent to establish; comments due by 4-7-03; published 3-6-03 [FR 03-05324]

FARM CREDIT ADMINISTRATION
Farm credit system:
Borrower rights; comments due by 4-7-03; published 2-4-03 [FR 03-02506]

FEDERAL COMMUNICATIONS COMMISSION
Radio frequency devices:
Unlicensed devices operating in additional frequency bands; feasibility; comments due by 4-7-03; published 1-21-03 [FR 03-01206]
Radio stations; table of assignments:
North Carolina and Virginia; comments due by 4-11-03; published 3-10-03 [FR 03-05333]
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FEDERAL MARITIME COMMISSION
Passenger vessel financial responsibility:
Performance and casualty rules, Alternative Dispute Resolution program, etc.; miscellaneous amendments; comments due by 4-8-03; published 12-27-02 [FR 02-32645]

FEDERAL RESERVE SYSTEM
Home mortgage disclosure (Regulation C):
Transition rules for applications; staff commentary; comments due by 4-8-03; published 3-7-03 [FR 03-05365]

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Competitive acquisition; debriefing; comments due by 4-7-03; published 2-4-03 [FR 03-02580]
Cost principles; general provisions; comments due by 4-7-03; published 2-4-03 [FR 03-02581]

HEALTH AND HUMAN SERVICES DEPARTMENT
Centers for Medicare & Medicaid Services
Medicare:
End-stage renal disease services; provider bad debt payment; comments due by 4-11-03; published 2-10-03 [FR 03-02974]

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Radiological health:
Diagnostic x-ray systems and their major components; performance standard; comments due by 4-9-03; published 12-10-02 [FR 02-30550]

HEALTH AND HUMAN SERVICES DEPARTMENT
Energy Employees Occupational Illness Compensation Program Act; implementation:
Special Exposure Cohort; classes of employees designated as members; procedures; comments due by 4-7-03; published 3-7-03 [FR 03-05604]

HOMELAND SECURITY DEPARTMENT
Coast Guard
Drawbridge operations:
New Jersey; comments due by 4-7-03; published 2-5-03 [FR 03-02696]
Pollution:
Ballast water management reports; non-submission penalties; comments due by 4-7-03; published 1-6-03 [FR 03-00100]
Vessel and facility response plans for oil; 2003 removal equipment requirements and alternative technology revisions
Meeting; comments due by 4-8-03; published 11-19-02 [FR 02-29168]
Ports and waterways safety:
Oahu, Maui, Hawaii, and Kauai, HI; security zones; comments due by 4-7-03; published 2-4-03 [FR 03-02523]

HOMELAND SECURITY DEPARTMENT
Lobbying restrictions; comments due by 4-7-03; published 3-6-03 [FR 03-05145]

HOMELAND SECURITY DEPARTMENT
Nondiscrimination on basis of disability in federally conducted programs or activities; comments due by 4-7-03; published 3-6-03 [FR 03-05142]

HOMELAND SECURITY DEPARTMENT
Nondiscrimination on basis of race, color, or national origin in programs or activities receiving Federal financial assistance; comments due by 4-7-03; published 3-6-03 [FR 03-05144]
Nondiscrimination on basis of sex in education programs or activities receiving Federal financial assistance; comments due by 4-7-03; published 3-6-03 [FR 03-05143]
Organization, functions, and authority delegations:
Immigration law enforcement; comments due by 4-7-03; published 3-6-03 [FR 03-05146]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Public and Indian housing:
Public housing assessment system; changes; comments due by 4-7-03; published 2-6-03 [FR 03-02608]

JUSTICE DEPARTMENT
DNA identification system:
USA PATRIOT Act; implementation—
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LABOR DEPARTMENT
Occupational Safety and Health Administration
Safety and health standards:
Commercial diving operations; comments due by 4-10-03; published 1-10-03 [FR 03-00372]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):

Competitive acquisition; debriefing; comments due by 4-7-03; published 2-4-03 [FR 03-02580]

Cost principles; general provisions; comments due by 4-7-03; published 2-4-03 [FR 03-02581]

PERSONNEL MANAGEMENT OFFICE

Federal Long Term Care Insurance Program; comments due by 4-7-03; published 2-4-03 [FR 03-02463]

PERSONNEL MANAGEMENT OFFICE

Health benefits, Federal employees:

Health care providers; financial sanctions; comments due by 4-11-03; published 2-10-03 [FR 03-03125]

PERSONNEL MANAGEMENT OFFICE

Homeland Security Act; implementation:

Voluntary separation incentive payments; comments due by 4-7-03; published 2-4-03 [FR 03-02766]

SECURITIES AND EXCHANGE COMMISSION

Securities:

Sarbanes-Oxley Act of 2002; implementation—

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OFFICE OF UNITED STATES TRADE REPRESENTATIVE

Trade Representative, Office of United States

Andean Trade Preference Act, as amended by Andean Trade Promotion and Drug Eradication Act; countries eligibility for benefits; petition process; comments due by 4-7-03; published 2-4-03 [FR 03-02705]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Aircraft products and parts; certification procedures:

Production Approval Holder's quality system; products and/or parts that have left system, performing work on; policy statement; comments due by 4-10-03; published 3-11-03 [FR 03-05128]

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BAE Systems (Operations) Ltd.; comments due by 4-11-03; published 3-12-03 [FR 03-05859]

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Sikorsky; comments due by 4-8-03; published 2-7-03 [FR 03-03031]

Turbomeca; comments due by 4-7-03; published 2-5-03 [FR 03-02633]

Turbomeca S.A.; comments due by 4-8-03; published 2-7-03 [FR 03-02996]

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TRANSPORTATION DEPARTMENT

Federal Highway Administration

Grants:

Operation of motor vehicles by intoxicated persons; withholding of Federal-aid highway funds; comments due by 4-7-03; published 2-6-03 [FR 03-02790]

TRANSPORTATION DEPARTMENT

Federal Motor Carrier Safety Administration

Motor carrier safety standards:

Intermodal container chassis and trailers; general inspection, repair, and maintenance requirements; negotiated rulemaking process; intent to consider; comments due by 4-10-03; published 2-24-03 [FR 03-04228]

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Grants:

Operation of motor vehicles by intoxicated persons; wtihholding of Federal-aid highway funds; comments due by 4-7-03; published 2-6-03 [FR 03-02790]

TREASURY DEPARTMENT

Comptroller of the Currency

National banks:

Authority provided by American Homeownership and Economic Opportunity Act, and other miscellaneous amendments; comments due by 4-8-03; published 2-7-03 [FR 03-02641]

TREASURY DEPARTMENT

Community Development Financial Institutions Fund

Bank Enterprise Award Program; implementation; comments due by 4-7-03; published 2-4-03 [FR 03-02336]

Community Development Financial Institutions Program; implementation; comments due by 4-7-03; published 2-4-03 [FR 03-02335]

TREASURY DEPARTMENT

Currency and foreign transactions; financial reporting and recordkeeping requirements:

USA PATRIOT Act; implementation—

Anti-money laundering programs for businesses engaged in vehicle sales; comments due by 4-10-03; published 2-24-03 [FR 03-04173]

Anti-money laundering programs for travel agencies; comments due by 4-10-03; published 2-24-03 [FR 03-04172]

VETERANS AFFAIRS DEPARTMENT

Adjudication; pensions, compensation, dependency, etc.:

Cirrhosis of liver in former prisoners of war; presumptive service connection; comments due by 4-11-03; published 2-10-03 [FR 03-03175]

VETERANS AFFAIRS DEPARTMENT

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Veterans Education and Benefits Expansion Act; implementation; comments due by 4-11-03; published 2-10-03 [FR 03-03176]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 395/P.L. 108–10

Do-Not-Call Implementation Act (Mar. 11, 2003; 117 Stat. 557)

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–050–00001–6)	9.00	[4] Jan. 1, 2003
3 (1997 Compilation and Parts 100 and 101)	(869–048–00002–0)	59.00	[1] Jan. 1, 2002
4	(869–050–00003–2)	9.50	Jan. 1, 2003
5 Parts:			
1–699	(869–050–00004–1)	57.00	Jan. 1, 2003
700–1199	(869–050–00005–9)	46.00	Jan. 1, 2003
1200–End, 6 (6 Reserved)	(869–048–00006–2)	58.00	Jan. 1, 2002
7 Parts:			
1–26	(869–048–00001–1)	41.00	Jan. 1, 2002
*27–52	(869–050–00008–3)	47.00	Jan. 1, 2003
53–209	(869–050–00009–1)	36.00	Jan. 1, 2003
210–299	(869–048–00010–1)	59.00	Jan. 1, 2002
300–399	(869–050–00011–3)	43.00	Jan. 1, 2003
400–699	(869–050–00012–1)	39.00	Jan. 1, 2003
*700–899	(869–050–00013–0)	42.00	Jan. 1, 2003
900–999	(869–048–00014–3)	58.00	Jan. 1, 2002
1000–1199	(869–048–00015–1)	25.00	Jan. 1, 2002
1200–1599	(869–048–00016–0)	58.00	Jan. 1, 2002
1600–1899	(869–050–00017–2)	61.00	Jan. 1, 2003
1900–1939	(869–048–00018–6)	29.00	Jan. 1, 2002
1940–1949	(869–048–00019–4)	53.00	Jan. 1, 2002
1950–1999	(869–048–00020–8)	47.00	Jan. 1, 2002
2000–End	(869–050–00021–1)	46.00	Jan. 1, 2003
8	(869–048–00022–4)	58.00	Jan. 1, 2002
9 Parts:			
1–199	(869–048–00023–2)	58.00	Jan. 1, 2002
200–End	(869–048–00024–1)	56.00	Jan. 1, 2002
10 Parts:			
*1–50	(869–050–00025–3)	58.00	Jan. 1, 2003
*51–199	(869–050–00026–1)	56.00	Jan. 1, 2003
200–499	(869–048–00027–5)	44.00	Jan. 1, 2002
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11	(869–048–00029–1)	34.00	Jan. 1, 2002
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200–219	(869–048–00031–3)	36.00	Jan. 1, 2002
220–299	(869–048–00032–1)	58.00	Jan. 1, 2002
300–499	(869–050–00033–4)	43.00	Jan. 1, 2003
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900–End	(869–050–00036–9)	47.00	Jan. 1, 2003
13	(869–050–00037–7)	47.00	Jan. 1, 2003
14 Parts:			
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*60–139	(869–050–00039–3)	58.00	Jan. 1, 2003
140–199	(869–050–00040–7)	28.00	Jan. 1, 2003
200–1199	(869–048–00040–2)	47.00	Jan. 1, 2002
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19 Parts:			
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21 Parts:			
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300–499	(869–048–00063–1)	29.00	Apr. 1, 2002
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18–End	(869–048–00132–8)	58.00	July 1, 2002
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90–139	(869–048–00179–4)	42.00	Oct. 1, 2002
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200–499	(869–048–00183–2)	37.00	Oct. 1, 2002
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50 Parts:			
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*CFR Index and Findings Aids	(869–050–00048–2)	59.00	Jan. 1, 2003
Complete 2001 CFR set		1,195.00	2001
Microfiche CFR Edition:			
Subscription (mailed as issued)		298.00	2000
Individual copies		2.00	2000
Complete set (one-time mailing)		290.00	2000
Complete set (one-time mailing)		247.00	1999

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2002, through January 1, 2003. The CFR volume issued as of January 1, 2002 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2001, through April 1, 2002. The CFR volume issued as of April 1, 2001 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2001, through July 1, 2002. The CFR volume issued as of July 1, 2001 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2001, through October 1, 2002. The CFR volume issued as of October 1, 2001 should be retained.